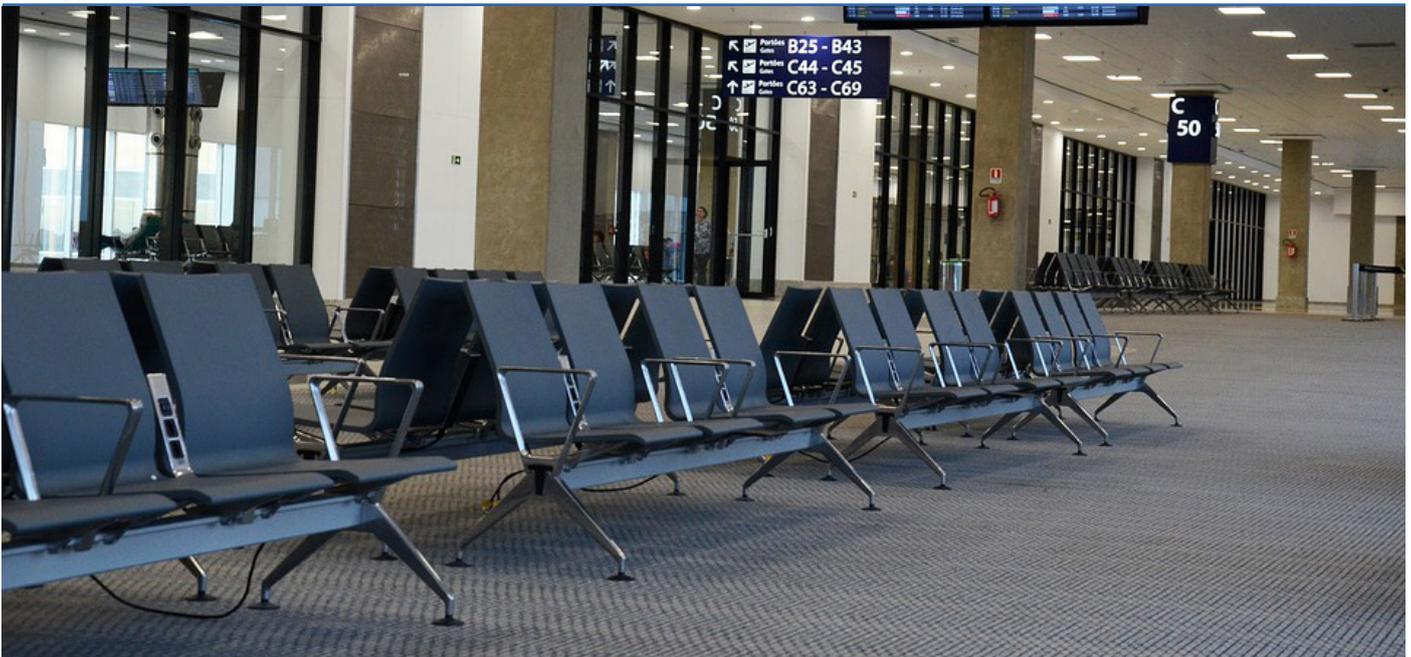


MARCH:**MOVEMENT CONTROL ORDER DUE TO COVID-19:
TOP 10 FAQs BY EMPLOYERS AND EMPLOYEES****A. BACKGROUND****Movement Control Order and ancillary orders/regulations/statements**

On 16.3.2020, the Prime Minister of Malaysia issued an [announcement](#) that the Government will implement a Movement Control Order (“MCO”) throughout Malaysia from 18 to 31 March 2020 (“**the Controlled Period**”) as a measure to curb the outbreak of COVID-19. The MCO is being enforced pursuant to the Prevention and Control of Infectious Diseases Act 1988 (“**PCIDA**”) and the Police Act 1967.

On 17.3.2020, the Minister of Health issued the Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 (“**the Order**”). The Order declared all States and Federal Territories of Malaysia as infected areas.

On 18.3.2020, the Minister of Health issued the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 (“**the Regulations**”). The Regulations outlined several measures in containing the spread of COVID-19 during the Controlled Period.

From 19.3.2020 to 23.3.2020, the Ministry of Human Resources issued several Frequently Asked Questions (“**MOHR FAQ**”) in respect of issues pertaining to employment relating to the MCO. The Ministry of Human Resources has been revising the MOHR FAQ from time to time.

As the authorities are still updating the relevant legislations, guidelines and statements from time to time, the views herein are prepared based on the general position of Malaysian employment laws, legislations, guidelines and statements available as of the date of this article.

MARCH:**MOVEMENT CONTROL ORDER DUE TO COVID-19:****TOP 10 FAQs BY EMPLOYERS AND EMPLOYEES****B. THE REGULATIONS**

Salient points of the Regulations which are relevant to employers and employees are summarized as below:

Salient Points of the Regulations	
Regulation	Description
Regulation 3	<p>Control of Movement and Gatherings</p> <ol style="list-style-type: none"> No person shall make any journey from one place to another except for the following purposes– <ol style="list-style-type: none"> to perform any official duty; to make any journey to and from any premises for essential services; to purchase, supply or deliver food or daily necessities; to seek healthcare or medical services; or any other special purposes as may be permitted by the Director General of Health (“Director General”). No person shall make a journey from one infected local area to another except with the prior written permission of a police officer in charge of a police station.
Regulation 4	<p>Health examination upon return to Malaysia</p> <p>A citizen or permanent resident of Malaysia returning from overseas is required to undergo a health examination upon arrival in Malaysia before proceeding for immigration clearance, and shall comply with any order issued by an authorised officer.</p>
Regulation 5	<p>Essential services</p> <ol style="list-style-type: none"> The Schedule to the Regulations contains a list of ‘essential services’ which are allowed to operate during the Controlled Period. Premises that provide essential services may be opened provided that the number of personnel and patrons at the premises are to be kept to the minimum. Premises provide non-essential services may be opened provided prior written permission of the Director General is obtained and the Director General may impose any conditions as he thinks fit.
Regulation 6	<p>Information</p> <p>If an authorised officer request a person to provide any information relating to the prevention and control of infectious disease, the person shall comply with the request.</p>
Regulation 7	<p>Offences</p> <ol style="list-style-type: none"> Any person who contravenes any provision of these Regulations commits an offence and shall, on conviction, be liable to: <ol style="list-style-type: none"> fine not exceeding RM1,000; <u>AND/OR</u> imprisonment for a term not exceeding 6 months If an offence is committed by a body corporate, any person who, at the time the offence is committed, was a director, manager, secretary or similar officer of the body corporate, or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of the affairs of the body corporate or was assisting in such management, may be charged jointly and severally with the body corporate for the offence unless the said person proves that having regard to the nature of his functions in that capacity, the offence was committed without his knowledge, consent or connivance, and he has taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

MARCH:**MOVEMENT CONTROL ORDER DUE TO COVID-19:
TOP 10 FAQs BY EMPLOYERS AND EMPLOYEES****C. TOP 10 FAQs BY EMPLOYERS AND EMPLOYEES****1. What are the 'essential' and 'non-essential' services?**

Below is a list of essential and non-essential services according to the Regulations and the MOHR FAQ:

Essential services	Non-essential services
Banking and finance, electricity and energy, fire, port, dock and airport services and undertakings including stevedoring, lighterage, cargo handling, pilotage and storing or bulking of commodities, postal, prison, production, refining, storage and distribution of fuel and lubricants, health-care and medical, solid waste management and public cleansing, sewerage, radio communications including broadcasting and television, telecommunication, transport by land, water or air, water, e-commerce, defence and security, food supply, wildlife, immigration, customs, hotels and accommodations, any services or works determined by the minister as essential or critical to public health or safety.	Any other services which are not listed in the essential services. Under the MOHR FAQ, these are listed as non-essential services: vehicle maintenance or mechanic workshops, works on in-progress constructions and renovations for safety and security infrastructures, religious, social, cultural events except for funerals, sports, domestic travel, out-of-country travel, international entry into Malaysia, Malaysians who are working in Singapore, Thailand, Brunei and Indonesia crossing the border to go to work

Kindly take note that according to the [Media Statement issued by the National Security Council](#), some of the work in essential services are only allowed to operate in a restricted manner, e.g.: allowed to operate at minimum level / work from home whilst some non-essential services have been allowed to operate by applying for permission to operate from the [Ministry of International Trade and Industry](#). You are advised to seek for appropriate legal advice should you require clarification.

2. How should

i. an employer of essential services; or

ii. an employer of non-essential services but granted permission to operate during the Controlled Period, conduct their businesses during the Controlled Period?

An employer of essential services or non-essential services but granted permission to operate during the Controlled Period may require his/her employees to attend to work at workplace during the Controlled Period. However, the employer is required to take the following measures throughout the course of work:

- a. reduce the size of workforce in operations by 50% or minimise the number of employees required to work at workplace;
- b. arrange for the employees who are not involved in critical works to work from home;
- c. ensure minimum traveling by the employees;
- d. both employer and employees are not allowed to make international travel during the Controlled Period;
- e. perform daily body temperature checks on the employees;
- f. comply with procedures in preventing COVID-19 issued by the Ministry of Health;
- g. provide hand sanitizers and appropriate protection to the employees at the workplace;
- h. sanitize and clean the workplace if necessary;
- i. anyone who displays symptoms of COVID-19 shall seek for medical attention immediately;
- j. practise social distancing at the workplace.

Employers are also required to provide documentation to prove that their employees are working in essential services or non-essential services but granted permission to operate during the Controlled Period. This is to safeguard the employees and to ease their travel to and from their workplaces.

MARCH:**MOVEMENT CONTROL ORDER DUE TO COVID-19:****TOP 10 FAQs BY EMPLOYERS AND EMPLOYEES****3. Can an employee of essential services refuse to work?**

An employee of essential services cannot refuse to work unless there are valid reasons to support the refusal, e.g. the employee is ordered by a medical practitioner to be quarantined and/or the workplace is potentially contaminated due to certified case of COVID-19. Failure to attend to work without a valid reason would amount to absenteeism which may warrant disciplinary action(s) begin taken against the employee.

4. Can an employer of non-essential services carry on business as usual, e.g. operate business premises and require employees to work as usual?

Business which falls under non-essential services cannot carry on business as usual at their business premises and/or require employees to work as usual without prior permission from the relevant authority. However, they may continue their business remotely through work from home arrangement (if possible and practicable). Employees of non-essential services if compelled to work as usual, may lodge a police report against the employer.

5. Can an employer of non-essential services instruct employees to take annual leave and/or unpaid leave during the Controlled Period?

The MOHR FAQ specifically addressed this issue by stating that employers in general, irrespective of essential or non-essential services (emphasis is ours), cannot instruct or compel their employees to take annual leave and/or unpaid leave during the Controlled Period as the movement restriction was made under the PCIDA.

6. Is an employer of non-essential services obligated to pay employees during the Controlled Period? According to the MOHR FAQ, all employers are required to pay salaries and allowances to their employees during the Controlled Period. However, the employers do not need to pay attendance/travel allowances to employees if there is no travel or attendance required during the Controlled Period.

Employees with daily payout must be paid based on the agreement between the employee and employer in the offer letter/service contract/latest pay increment letter. For employees without a fixed wage, the daily rate must not be less than the minimum wage as underlined in the Minimum Wage Order 2020.

7. What are the legal consequences for an employer who fails to pay salary during the Controlled Period or compels employees to take annual leave or unpaid leave during the Controlled Period?

In such case, an employee may lodge a complaint against the employer at the Department of Labour. For unionized employees, the employees' union may raise this issue as a trade dispute pursuant to Section 18 of the Industrial Relations Act 1967.

8. Can an employer implement a pay-cut as a measure to avoid termination of employment?

Based on the MOHR FAQ, it appears that in the event pay-cut or salary deduction is necessary in order to avoid termination of employment, employers are encouraged to have dialogues with their employees and obtain employees' consent prior to any salary deduction. If there is any collective agreement in place, employers are to discuss and obtain consent from the employees' union in respect of salary deduction.

MARCH:**MOVEMENT CONTROL ORDER DUE TO COVID-19:
TOP 10 FAQs BY EMPLOYERS AND EMPLOYEES****9. Can an employer implement retrenchment exercise due to COVID-19 epidemic?**

In the event that an employer faces financial difficulties due to this COVID-19 epidemic, the employer may implement retrenchment exercise provided that the employer complies with the necessary redundancy and retrenchment laws, which amongst others, the employer must prove that the epidemic had caused great financial hardship on the business. In this case - the MCO and/or the Controlled Period itself cannot be the only ground justifying in supporting the retrenchment exercise.

The MOHR FAQ further states that employers are to take 3 measures prior to exercising retrenchment, which amongst others, (i) proving that the business downturn was genuinely caused by COVID-19; (ii) cutting down working hours, implement pay-cut or temporary lay-off; (iii) in the event that retrenchment exercise is inevitable, employers are to first terminate the employment of foreign employees and to apply the principle of Last In First Out for termination of local employees. Employers are to be prepared with justifications if they are to deviate from these suggested measures.

10. What can an employee do if he/she is terminated due to business downturn caused by COVID-19?

Under Malaysian employment and industrial relations laws, any dismissal of a workman must be with just cause or excuse. In the event where a workman considers that he/she has been dismissed without just cause or excuse by his/her employer, he/she may make representations in writing to the Director General of Industrial Relations to be reinstated to his/her former employment. Employers are advised to comply with the necessary redundancy and retrenchment laws in so far as termination of employment due to business downturn caused by COVID-19. Both employers and employees should immediately seek legal assistance of lawyers to safeguard and protect their legal rights.

Should you have any queries or require more information, please do not hesitate to contact Tay & Partners' Employment and Industrial Relations Practice Group.

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