

# FAQ: The Employer's Legal Obligations in Respect of Health & Safety During The COVID-19 Pandemic

for LexisNexis Resource Hub – COVID-19



On 11 March 2020, the World Health Organisation ('WHO') declared COVID-19 as a global pandemic. This has caused employers to have concerns and questions as to the necessary measures they should be taking to ensure the health and safety of their employees.

Here are some frequently asked questions:

## 1. Is there a specific legislation that covers the employer's legal obligations in respect of health and safety?

Section 15(1) of the [Occupational Safety and Health Act 1994](#) ('OSHA') states that employers have a duty to ensure the safety, health and welfare of all their employees at work. The failure to do so is an offence and is liable to a fine not exceeding RM50,000 or imprisonment of up to two years or both.

## 2. Does OSHA apply in respect of the COVID-19 pandemic?

Yes. Since OSHA is drafted generally, there is no reason why the obligations under OSHA will not apply during the pandemic. However, OSHA does not specify what actions an employer must take during a pandemic, so it will likely be assessed on a case-by-case basis and subject to reasonableness.

Therefore, under OSHA, employers should take all steps that are needed to ensure that their employees' safety, health and welfare are protected and that employers are not negligent in the discharge of these obligations.

## 3. Does the [Employment Act 1955](#) ('EA') impose any duties that employers should be aware of during the COVID-19 pandemic?

The EA doesn't provide specific obligations in respect of a pandemic. However, under section 14(3) of the EA, an employee may terminate his contract of service with his employer without notice if he or his dependants are immediately threatened with danger to their persons by disease, which the employee did not agree to under his contract of employment.

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#### **4. Is there a common law duty of care owed by employers?**

Under the law of tort, employers have a duty of care towards their employees. These duties would include the duty to provide a safe environment for employees to work in, and reasonable care must be taken not to expose employees to danger. An employer's failure to ensure that a workplace is safe could amount to negligence if the employee suffers any injury to their health as a direct result of the employer's act or omission.

#### **5. What actions should the employers take in light of the pandemic?**

On 5 February 2020, the Ministry of Human Resources issued guidelines to employers on how to handle employment issues relating to COVID-19 ('Guidelines'):

##### **(a) Medical Examination**

Employees who have returned from countries with high incidences of COVID-19 should be examined immediately by a registered medical practitioner to ascertain entitlement for sick leave under section 60F of the EA. These medical costs should be borne by the employer.

##### **(b) Sick Leave and Hospitalisation Entitlement**

Those employees who have received a quarantine order from a registered medical practitioner should be provided with paid sick leave or hospitalisation entitlement under section 60F of the EA during the quarantine period. In addition, the Ministry has encouraged for employers to provide extra remuneration to employees with quarantine order exceeding sick leave or hospitalisation.

##### **(c) Full Pay and Prohibition from Attending Work**

Employees who are placed under quarantine orders upon return from countries with COVID-19 should receive full pay if they were there on official duty. Employers should also not prevent employees from attending work if no quarantine orders have been issued by a registered medical practitioner. However, if these employees are unwell, they could be permitted to stay at home under paid sick leave.

Understandably, these Guidelines were issued prior to the implementation of the movement control order ('MCO'). The suggested guideline of not preventing employees from attending work may no longer be applicable even after the MCO is lifted, in light of the encouragement to implement social distancing.

#### **6. Are there any specific procedures or policies which an employer should adopt?**

The Ministry of Human Resources (through the Department of Occupational Safety and Health) has issued guidelines to employers on how to reduce the spread of COVID-19 at the workplace:

- (a) Employers should conduct a risk evaluation and improve their workplace procedures to ensure that the risk of exposure to the virus is minimised, especially for high risk sectors ('front liners') where employees are directly exposed to patients or visitors with symptoms;
- (b) Employers should identify employees who have travelled to countries with recorded cases of COVID-19 and require these employees to undergo health assessments especially if they are showing symptoms like fever, cough and difficulty breathing, so that they can get immediate treatment. Employers are required to comply with any quarantine order issued;
- (c) All employers and employees who wish to travel to countries with recorded cases of COVID-19, whether for personal or business reasons, should delay their travel unless it is absolutely essential;
- (d) All employers should provide necessary personal protective equipment to employees based on the risk evaluation conducted;
- (e) Employers and employees should have high standards of hygiene such as washing hands thoroughly with soap and water or using hand sanitisers;
- (f) Employers and employees should wear masks and use hand sanitisers where necessary;
- (g) Employers and employees should avoid visiting crowded places and interacting with any individuals with symptoms;
- (h) Employers and employees should seek medical treatment immediately if they are ill, or have symptoms such as difficulty breathing, fever, or cough;
- (i) Employees are required to cooperate with their employers and comply with all instructions by their employers to curb the spread of COVID-19;
- (j) Employers and employees should check the Ministry of Health's website to get updated information on the COVID-19 outbreak and latest developments.

It is therefore advisable for employers to put into place an action plan to protect the safety and health of their employees, and to assist with curbing the outbreak of COVID-19 in the workplace, even though there is no specific legal requirement for employers to have these detailed action or response plans yet.

Employers can consider implementing measures such as: providing adequate facilities for employees to practice good personal hygiene (e.g. alcohol-based hand sanitisers, hand soaps), ensuring the workplace is regularly and thoroughly sanitised and disinfected, and encouraging employees to adopt social distancing such as by allowing/encouraging remote working. By adopting such measures, employers can protect their employees and do their part to flatten the curve of the outbreak.

*In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice. The information presented is correct to the date of its publication.*

## About the Author

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