

April 24, 2020

Employer Protection Responsibilities

The Workplace Safety and Health Act (Chapter 354A, Singapore Statutes) imposes a statutory duty on employers “to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of [their] employees”. A breach of this duty constitutes an offence, and employers which are corporate entities may be liable to a fine of up to S\$500,000 for the first infringement. The Ministry of Manpower (MOM) has stated that where an employee is required to take a Leave of Absence (LOA) or is issued with a Stay-Home Notice (SHN), his/her employer must ensure that the employee stays away from the workplace.

An employer may be liable to pay compensation in respect of the incapacity or death of an employee who contracts COVID-19 due to an exposure to the virus arising out of and in the course of his/her employment. As such, it is important that employers ensure that employees who are on LOA/SHN stay away from the workplace. Employers are also advised to defer all business travel in accordance with the guidelines issued by the Ministry of Health (MOH).

Employers with foreign employees living in dormitories should also be aware of the various regulations, advisories and guidelines that have been released by the various ministries and agencies regarding, among other things, restrictions on movement, housing, provision of food and daily essentials, payment of salaries, and other measures put in place to ensure the health and safety of such foreign employees.

Closure of Workplaces

Effective 7 April 2020 until 1 June 2020 (both dates inclusive), all retail outlets and all workplace premises must close, with the exception of those providing essential services, their related supply chains and service providers (Essential Services), which may continue to operate with prior approval from the Ministry of Trade and Industry (MTI). The updated list of essential services allowed to continue to operate is published [here](#). It was announced on 21 April 2020 that in line with a tightening of measures to prevent the spread of COVID-19, certain businesses that were previously allowed to continue operations will now be required to close as well. Businesses that previously received approval from MTI to operate between 7 April 2020 and 4 May 2020 can still continue to do so at their permitted workplace premises (Permitted Premises) unless notified otherwise by MTI.

Businesses that do not provide Essential Services may continue to operate (in limited or full capacity) if their employees are able to telecommute.

Businesses providing Essential Services (Essential Service Provider) must comply with the following measures:

- Telecommuting must be implemented wherever possible.

- Employers whose Permitted Premises remain open must have in place effective measures to prevent the transmission of COVID-19 at and across their workplace premises. Such measures include (but are not limited to):
 - Ensuring that teams working in different locations do not interact physically with one another.
 - Putting in place safe distancing measures.
 - Ensuring employees wear masks at all times.

Employers, which do not carry out Essential Services but believe that they have strong grounds for being exempted from the suspension, may apply to be exempted. However, only entities performing, or providing critical support for, essential activities will be exempted.

Events and Activities

Under the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 (COVID-19 Regulations), Essential Service Providers must cancel or defer all organised activities involving physical interactions between their employees, contractors or subcontractors (including the employees of their contractors and subcontractors) and any other individuals, except:

- Activities that are critical to the Essential Service Provider's business or operations.
- Activities during which employees are provided professional or vocational training or are tested or certified for professional or vocational purposes.

Telecommuting and Safe Distancing

Under the COVID-19 Regulations, Essential Service Providers must ensure that the following measures are implemented and communicated to all employees:

- Provide the facilities necessary for every employee to telecommute and must direct every employee to do so unless it is not reasonably practicable to do so.
- As far as reasonably practicable, segregate their workforce into 2 or more groups to avoid or minimise physical interactions between the groups.
- In relation to employees who are unable to telecommute, stagger their employees' reporting and dismissal times as far as reasonably practicable.
- As far as reasonably practicable, minimise physical interaction between employees working at the Permitted Premises.
- Take reasonable steps to ensure a distance of at least 1 meter between any 2 individuals in the Permitted Premises.
- Demarcate alternate seats as seats not to be occupied and ensure that all occupied seats are at least 1 meter apart (for example in board rooms, conference rooms and waiting areas).
- Apply practices to ensure that individuals forming queues in the Permitted Premises (for example queues to use the restrooms or the pantry) are at least 1 meter apart.

- As far as reasonably practicable, ensure that each of its employees wears a mask at all times.
- Implement a reporting procedure for employees who exhibit symptoms of COVID-19 or are otherwise physically unwell to immediate report to the Essential Service Provider, and appoint one or more individuals to receive such reports.

Other Obligations

Under the COVID-19 Regulations, occupiers of Permitted Premises must take steps to:

- As far as reasonably practicable, naturally ventilate the premises during working hours.
- Take the temperature of every individual entering the workplace and refuse entry to any individuals showing symptoms of fever.
- Collect and store the particulars of every individual (other than employees who regularly work at the Permitted Premises) entering the Permitted Premises to facilitate contact tracing.
- Refuse entry to anyone who is known or is suspected to have COVID-19 or to be subject to a movement control measure, or who refuses to comply with any of the abovementioned measures.

Employers are advised to:

- Monitor and ensure full compliance with the regulatory measures that are continually fine-tuned in response to the evolving situation in Singapore.
- Be aware that compliance with COVID-19 measures is a shared responsibility between the employer and employee, and to inform the employee of his/her obligations and procure compliance with the measures.
- Be aware that MOM will conduct checks through physical inspections, telephone and video calls as part of ongoing efforts to ensure that affected employees abide by the applicable requirements.
- Set clear HR policies relating to the treatment of employees who travel outside of Singapore, whether for work or otherwise, and communicate and explain such policies to their employees before implementing them.
- Increase the frequency of the cleaning of areas with high human contact.
- Provide additional guidance on handling customers who are unwell.
- Obtain travel declarations from employees on travel history / upcoming plans.
- Encourage employees to observe good personal hygiene.

Travel Protocols

The MOH has advised that all travel abroad should be deferred. Employers should obtain health and travel declarations from their employees on whether they have recently travelled to any of the affected countries and regions or if they have any upcoming travel plans. If an employee requests to not go on any work related travel, his/her employer should accede to such request and should not penalise the employee.

Employers should be aware of the following measures which have been implemented:

- Effective from 9 April 2020, 11:59 p.m., all Singapore Citizens, Permanent Residents and Long Term Pass holders entering Singapore will be required to serve a 14-day self-isolation at dedicated SHN facilities. Upon arrival, such individuals will be informed of the location and sent directly to the facility. The cost for the facility will be borne by the Singapore government except in the case of returnees who disregarded prevailing travel advisories and left Singapore from 27 March 2020.
- Employers are strongly urged by MOM to defer bringing their foreign employees into Singapore, and the validities of all in-principle approvals that are expiring from 21 March 2020 have been extended by two (2) months to facilitate this.
- Where their foreign employee's arrival cannot be deferred, employers must request for and obtain MOM's approval before their foreign employees and the dependants of their foreign employees can enter Singapore. However, the MOM has advised that entry approval will only be granted in very few cases. Employers should also ensure that they are able to fulfil their additional responsibilities in relation to each foreign employee returning to Singapore. These include, but are not limited to:
 - Ensuring that the foreign employee has a SIM card with a Singapore phone number to enable MOM to contact him/her.
 - Ensuring that the foreign employee understands the conditions of his/her SHN.
 - Arranging for the foreign employee's non-emergency medical needs to be attended to.

Employers should also ensure that their foreign employees are aware that they have certain responsibilities towards their dependants who are not employed. Companies may implement their own HR policies for the treatment of employees who have travelled overseas. Such policies may include the imposing of LOA of up to 14 days for employees returning to Singapore. (Long term pass holders includes holders of work passes and permits issued by MOM, student passes, dependant passes and long-term visit passes.)

Employee compensation in quarantine / if unable to perform functions

An employer may have employees who are issued a quarantine order (QO), a SHN or are required to take a LOA. Certain employees of businesses providing non-Essential Services may also be unable to work during this period.

Quarantine Order

Employees who are serving a QO are deemed to be on paid hospitalisation leave for the duration of their quarantine (this will be deducted from their hospitalisation leave entitlement). MOM encourages employers to exercise compassion and flexibility and to consider granting additional paid hospitalisation leave to employees who have used up their entitlement.

We would highlight that under the Quarantine Order Allowance Scheme, employers who have employees issued with QOs may make claims of S\$100 per affected employee per day if the following conditions are satisfied:

- The employer is a Singapore registered company;
- The employee is a Singapore Citizen, Permanent Resident or Work Pass holder;

- The employer submits proof of payment to employees when they are under quarantine; and
- The employees in question do not breach the QO.

The Quarantine Order Allowance Scheme will not apply in the case of S Pass or Work Permit holders whose QOs starts on or after 1 April 2020.

Leave of Absence / Stay-Home Notice

The entitlement of employees on LOA/SHN to payment is somewhat less clear and will generally fall to be determined based on the employment contract or employment terms between the employee and his/her employer.

Employers are required to ensure that employees who are on LOA/SHN stay away from the workplace. As such, employers are encouraged to adopt flexible work arrangements to allow employees on LOA/SHN to work from home.

MOM encourages employers to provide additional paid leave of absence on top of employees' annual leave if it is not possible for employees to work from home. If additional paid leave of absence is not feasible, then MOM suggests the following options, whether singly or combined:

- Treat employees' LOA or SHN as paid hospitalisation leave or paid outpatient sick leave (Option 1);
- Allow employees to apply for annual leave (Option 2);
- Allow employees to use advanced paid leave or apply for no pay leave, for employees who have used up their leave entitlements (Option 3); and/or
- Other mutually agreed arrangements between the employers and employees / unions (Option 4).

Where an employee embarks on work-related travel, employers are required to provide additional paid leave to cover:

- Any quarantine or self-isolation period imposed by the destination country.
- Any SHN or company-imposed LOA upon the employee's return to Singapore.
- Any delay in the employee's return to Singapore (for example, as a result of an unavailability of flights or the requirement to obtain MOM's pre-approval for foreign employees to return to Singapore).

An employer may require an employee who goes on non-work related and non-essential travel outside Singapore to use his/her annual leave entitlement to cover the duration of any mandatory SHN or company-imposed LOA, or any delays in returning to Singapore. If the employee does not have sufficient annual leave entitlements, the employer may allow him/her to use advance leave or may put him/her on no-pay leave.

Eligible employers may apply for financial assistance of S\$100 per affected employee per day under the LOA/SHN Support Programme and may qualify for a foreign worker levy waiver for the LOA/SHN period, subject to the fulfilment of certain conditions. An employer will not be eligible for support where work from home arrangements are available, or where the affected employee travels out of Singapore after certain dates as prescribed by MOM. Further, employers will not qualify for LOA/SHN support in relation to their S Pass or Work Permit holders whose LOA/SHN starts on or after 1 April 2020.

Closure of Non-Essential Businesses

Certain employees of businesses providing non-Essential Services may not be able to perform their functions while working from home. MOM has advised employers to work out clear salary arrangements with such employees. Please refer to the section below titled “**Employment terms adjustment in the event of operational difficulties**”.

Our Observations

There is inherently a tension between the interests of the employer and employee. From the employer’s perspective, the cost to businesses of employees going off on a 14-day LOA/SHN or of maintaining a workforce while business operations are shut down can be great. This cost, however, needs to be considered against many other factors such as minimising employee hardship during this exceptional period, and ensuring that the businesses continue to have sufficient manpower to allow the resumption of operations once the current control measures are lifted. At the heart of it, there is also the need to be fair to employees who find themselves placed in a situation that both the employer and the employees were unlikely to have envisaged at the time of the employment agreement.

Employees diagnosed with COVID-19

If an employee is diagnosed with COVID-19, contract tracing officers from MOH will engage the employer to identify close contacts and determine who should be placed on quarantine.

Employers should:

- Immediately vacate and cordon-off the immediate surroundings of the confirm case’s workstation or work zones.
- Thoroughly clean and disinfect that section of the premises.

If employees are unable to remain physically at their workstations (for example if they have been vacated from their workstations or are pending assessment by MOH), employers are encouraged to make arrangements to allow such employees to work from home. If this is not possible, the MOM encourages employers to exercise flexibility and to treat such absences from work as paid hospitalisation leave or paid outpatient sick leave.

Employee data privacy

Employers must comply with the Personal Data Protection Act 2012 (No. 26 of 2012) (PDPA) when they collect, use and/or disclose the personal data of their employees.

Before employers collect, disclose and/or use their employees’ personal data, they must obtain the consent from those employees and notify the employees of the purpose(s) for which their personal data is being collected, used and/or disclosed. In addition, an employer may only collect, use or disclose personal data for purposes that a reasonable person would consider appropriate in the circumstances.

The employer must protect the personal data in its possession or control by making reasonable security arrangements. Where such personal data is transferred outside of Singapore, the employer must ensure that the standard of protection to that personal data is comparable to the protection afforded under the PDPA.

Finally, an employer shall stop retaining personal data as soon as it is reasonable to assume that retention is no longer necessary.

Employment terms adjustment in the event of

operational difficulties

Generally, an employer may not unilaterally vary an employee's terms of employment. Any variations must be discussed and mutually agreed by both the employee and the employer. If no agreement can be reached, either party can serve notice to terminate the employment.

Employers should engage and seek the consent of employees and their unions (if applicable) before implementing cost-saving measures that affect the salaries of employees such as:

- Adjustments to work arrangements with wage cuts (e.g. shorter work week);
- Direct adjustments to wages (e.g. reduction in annual wage increment, variable bonus, annual wage supplement or monthly variable component); or
- No-pay leave.

Please note that employers with at least 10 employees are required to notify MOM:

- If they have retrenched 5 or more employees within any 6-month period; or
- If they implement any cost-saving measures that result in a 25% or more reduction in employees' salaries (gross monthly salary for local employees, and basic monthly salary for foreign employees).

The National Wages Council (NWC) 2020/2021 Guidelines, which take effect from 1 April 2020 and apply to all employees, call on employers to consider the following measures (in order of priority):

1. Reduce non-wage costs.
2. Utilise the various grants offered by the Government to offset business and wage costs.
3. Trim wage costs.
4. Carry out responsible retrenchments (this should only be as a last resort).

If a wage reduction is necessary, the NWC has prescribed the following recommendations:

- The management of the company should lead by example when it comes to wage reductions.
- Employers can consider adjusting monthly variable wage components (MVC).
 - The adjustment should depend on the employer's situation and any applicable key performance indicators or guidelines for MVC cuts (if any), which have been agreed between the employer and the employees or unions.
 - Employers who have not implemented MVCs as part of their employees' wages could consider treating any cut in basic wages of up to 10% as an MVC cut (or a larger proportion in the case of management level employees)
 - Employers should set out clear guidelines on when and how such wage cuts (whether to the MVC or basic wage) will be restored.
- Employers should attempt to still pay their employees the Annual Wage Supplement.
- Any reduction of wages should be fairly applied to both local and foreign employees.

In light of the closure of all workplace premises from 7 April 2020 to 1 June 2020, MOM has advised employers to work out clear salary arrangements with employees who cannot work from home or at their workplace premises. Such arrangements should take into consideration the government support for wages (such as the Jobs Support Scheme

(JSS)) and any subsidies for training and should be based on the principle of shared responsibility. The tripartite partners (MOM, National Trades Union Congress and Singapore National Employers Federation) have recommended that employers pay their employees a baseline monthly salary. The tripartite partners have suggested the following salary arrangements for this period:

Local employees who continue to work full-time

Employees working in Essential Services, or employees in non-Essential Services who are telecommuting, must be paid their prevailing salaries including the employer's contributions to the Central Provident Fund (CPF).

Local employees who do not work full-time

Employers should minimally adopt the following salary arrangements:

Gross monthly salary of local employee		
	Up to S\$4,600	More than S\$4,600
Employer assigns work to employee to complete at home	Continue to pay their prevailing salaries, including employer's CPF contributions.	Use all the enhanced JSS pay-out for April and May to provide for a baseline monthly salary to the employees including the employer's share of the CPF contributions; and Provide for work done on a pro rata basis – for example, if the employee works half-load (i.e. at 50%), the employer should pay the employee 50% of his monthly salary in addition to abovementioned baseline monthly salary, subject to a cap of his prevailing salary.

Employer does not assign work to employee
Use all the enhanced JSS pay-out for April and May to provide for a baseline monthly salary to the employee including employer's CPF contributions.

If the employee's salary under the above salary arrangements is lower than his monthly salary before 7 April 2020, his employer should consider applying one or more of the following:

- Send the employee for training approved for Absentee Payroll Funding.
- Apply for and implement a Flexible Work Schedule.
- Grant the employee additional paid leave.
- Allow the employee to utilise his existing leave entitlements.

Where possible, employers should also allow and support their local employees to take on a second job to support themselves during this period.

Foreign employees who continue to work full-time

- Foreign employees who continue to work full-time must be paid their prevailing salaries.

Foreign employees who do not work full-time

- Employers will still be responsible for their foreign employees' upkeep and maintenance.

- Employers, employees and their unions must agree on salary and leave arrangements.
- The quantum of salary and upkeep support provided by employers to work permit holders should not be less than the Foreign Worker Levy Rebates received by the employer.

Support for Employer

The Singapore government has in place, various schemes that could help employers during these unprecedented times. The available schemes include, but are not limited to, the following:

Jobs Support Scheme

Under the JSS, employers are entitled to a cash grant for each employee who is a Singapore Citizen or Permanent Resident. The cash grant is equal to 25% of 9 months of the first S\$4,600 of the gross monthly wages of such employees for the months of October to December 2019 and February to July 2020. This percentage is increased to 50% for employers in the food services sector, and 75% for employers in the aviation and tourism sectors. The JSS is applicable to all employers who have made CPF contributions for their local employees with a few exceptions, including, but not limited to, government organisations, unregistered entities and representative offices.

It has been announced that the JSS will be enhanced further to provide higher support for the months of April and May 2020. All employers in Singapore will receive a cash grant of 75% of the first S\$4,600 of the gross monthly wages of employees who are Singapore Citizens or Permanent Residents for the months of April and May.

The Ministry of Finance has stated that the JSS is intended to offset and protect local employees' wages. Employers must act responsibly and fairly, taking reference from the Tripartite Advisory on Salary and Leave Arrangements. Further, employers who place their employees on mandatory no-pay leave or retrench them will not be entitled to the enhanced JSS pay-outs for the months of April and May for those employees.

Work-Life Grant (WLG)

The WLG comprises the Job Sharing Incentive and the Flexible Work Arrangement (FWA) Incentive.

- An employer who implements job sharing (where 2 or more persons share responsibilities of 1 full-time job) may be eligible for the Job Sharing Incentive of S\$3,500 per local PMET employee (professionals, managers, executives and technicians) on the job-sharing scheme, per year for 2 consecutive years, capped at S\$35,000.
- An employer who implements FWAs (such as flexible working hours and telecommuting) may be eligible for the FWA Incentive of S\$2,000 per local employee who is a regular user of such flexible work arrangements, per year, capped at S\$70,000.

Foreign Worker Levy Waiver and Rebate

Employers with foreign workers on work permits and S Passes will receive additional support to reduce their wage costs and to enable them to take care of such workers. The monthly Foreign Worker Levy due in April and May 2020 will be waived, and firms may be eligible to receive a total of 2 Foreign Worker Levy Rebates of S\$750 each for each work permit or S Pass holder, based on the previous levies paid in 2020.

Dentons has leveraged our global footprint to provide clients with an overview of their obligations as employers across multiple markets. We answer the typical questions you might have, and provide guidance around key employment concerns in the COVID-19 Global Labor & Employment Tracker. This is a useful tool for employers who need a view

across multiple jurisdictions on employment guidelines during the pandemic. Please click [here](#) for more articles on the Temporary Measure Act, and other articles on the COVID-19.

(Updated as of 26 April 2020)

Your Key Contacts



I-An Lim

Senior Partner, Singapore

D +65 6885 3627

i-an.lim@dentons.com