



MOVEMENT CONTROL ORDER FAQ FROM AN EMPLOYMENT PERSPECTIVE

On 16.3.2020, the Malaysian government decided to implement the Movement Control Order (“MCO”) from 18.3.2020 until 31.3.2020 to address the Covid 19 outbreak in Malaysia and the MCO has now been extended until 14.4.2020.

The MCO, in essence, imposes the following:

- (a) Prohibition of mass movements and gatherings which includes religious, sports, social and cultural gatherings;
- (b) Restriction on Malaysians travelling abroad with those returning from overseas having to undergo a health screening and a self-quarantine for a period of 14 days;
- (c) Restriction on foreign visitors entering Malaysia;
- (d) Closure of all government and private schools including kindergartens and religious schools;
- (e) Closure of public and private institutes of higher education; and
- (f) Closure of all government and private premises save for essential services.

We set out below some of the frequently asked questions (“FAQ”) following the implementation of the MCO.

1. What are the essential services which are allowed to operate during the MCO?

The essential services which are allowed to operate during the MCO are water, electricity, energy, telecommunications, postal, transportation, irrigation, oil, gas, fuel, lubricants, broadcasting, finance, banking, health, pharmacy, fire, prison, port, airport, safety, defence, cleaning, retail and food & beverage.

2. Can the construction industry operate during the MCO?

No. Construction activities have been classified as non-essential services by the National Security Council. There is however an exception for critical work. Critical work involves any work which will result in danger to the workers, public or environment if stopped. Examples of critical work include:

- (i) Slope repair;
- (ii) Traffic management control;
- (iii) Upgrading facility works at critical services premises;

- (iv) Works to ensure the safety of scaffolding;
- (v) Works to ensure the safety of tower cranes and chain cranes;
- (vi) The building of Bailey bridges at locations where bridges have collapsed;
- (vii) Emergency work under the contractual agreement; and
- (viii) Other unfinished work which could pose dangers.

3. What are the consequences if an employer does not comply with the MCO?

A violation of the MCO by an employer would be considered a criminal offence pursuant to Regulation 7 of the Prevention and Control of Infectious Diseases (Measures Within the Infected Local Area) 2020. It is punishable by a fine not exceeding RM1,000.00 or imprisonment for a term not exceeding 6 months or both.

4. Can employers require employees to work from home during the MCO?

Yes, employers can require employees to work from home during the MCO if it is appropriate and possible to do so as the MCO only requires companies who are involved in non-essential services to close their business premises.

5. What happens if employees of companies involved in essential services refuse to come to work during the MCO?

This can be considered to be absenteeism as employees of companies involved in essential services are required to be present at work during the MCO unless otherwise agreed with their employers.

Pursuant to a recently issued FAQ, the Human Resource Ministry has stated that employers need not pay the salaries of employees who refuse to come to work during the MCO even though their company is involved in essential services.

6. Are employers involved in non-essential services required to pay the salaries of their employees during the MCO?

Yes. Pursuant to the FAQ, the Human Resources Ministry has stated that an employee's salary must be paid in full in accordance to his or her employment contract during the MCO.

For employees whose salaries are not fixed, then they must be paid a daily wage in accordance to the minimum wage prescribed under the Minimum Wages Order 2020.

It should also be noted that Section 24 of the Employment Act 1955 does not entitle an employer to deduct the salary of an employee by reason of a shut down. For employees who are not subject to the Employment Act 1955, as set out above, they must be paid their salaries in accordance to their employment contract.

7. Can employers make deductions from the annual leave of their employees during the MCO?

The Human Resources Ministry, in their FAQ, has stated that an employee's annual leave should not be deducted during the MCO. This is because the MCO has been implemented pursuant to the Prevention and Control of Diseases Act 1988 (Act 342).

In fact, the Human Resources Ministry had issued guidelines previously stipulating that employers should not deduct the annual leave of employees if employees are unable to attend work due to a quarantine order.

8. Can employers require their employees to go on unpaid leave during the MCO?

Generally, employers faced with financial difficulties due to business or economic downturn, are allowed to implement measures such as requiring employees to go on unpaid leave or reducing the salaries of the employees out of good faith and to avoid having to go on a retrenchment exercise.

The Malaysian government had also recently announced that employees who are required to go on unpaid leave during the MCO will receive a cash assistance of RM600.00 a month if their monthly salary is under RM4,000.00. However, the Human Resources Ministry, in their recent FAQ, has clarified that this incentive only applies to employees who are required to go on unpaid leave for at least one (1) month and as such, this incentive would not apply during the MCO [although the MCO has been extended until 14.4.2020 as it still falls short of one (1) month].

In addition, as the Human Resources Ministry has stated that the salaries of employees must be paid in full during the MCO, it can be implied that employers are not allowed to require their employees to go on unpaid leave during the MCO.

9. Can employees be laid-off due to the MCO?

Employees are allowed to retrench their employees on the ground of redundancy. Redundancy occurs when an employee's services are no longer required by the company and the employee is surplus to the requirements of the company. Redundancy usually occurs when a company faces financial difficulties due to a slowdown in business or the economy. The implementation of the MCO where companies involved in non-essential services are required to close their business premises could result in companies facing financial difficulties and some companies may look to lay-off their employees by implementing a retrenchment exercise.

However, it is best for employers to avoid implementing such measures as the Human Resources Ministry in their recent FAQ has stated that the salaries of employees must be paid in full and deductions cannot be made from the annual leave of employees. Thus, it can be implied that employers must continue to abide by their obligations under the employment contracts of their employees during the MCO.

Furthermore, retrenchment should only be exercised by employers as a last resort in any given situation.

10. What happens if an employee is laid-off or an employee's salary is not paid in full or an employee's annual leave is deducted during the MCO?

In such a situation, the employee could possibly consider himself or herself to have been constructively dismissed by the employer. The employee will however have to establish amongst others that:

- (i) There has been a breach of the employment contract by the employer;
- (ii) The breach must go to the root of the employment contract;
- (iii) The employee has informed and given the employer an opportunity to remedy the breach; and
- (iv) The employee must have left his or her employment based on the breach of the employment contract by the employer and not for any other reason.

Note: This article does not constitute legal advice on any of the issues addressed above. It merely sets out views on common issues faced by employers and employees by reason of the recent implementation of the MCO. Please however feel free to contact us should you have any queries or require any clarification.

Written by,

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