

Dear MRCA Members,



FAQS on the effect of the Movement Control Order on Employment Contract

- 1. Are the employers required to close their businesses completely during the enforcement of the Movement Control Order (“MCO”) from 18th of March 2020-14th of April 2020 (“the MCO Period”)?**

Unless businesses are listed under the category of “Essential Business” as provided for under **Appendix 1 of the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 (“the Regulations”)**, the employers of “non-essential business” are only required to close their business or office premises which means that such businesses should not provide any services and carry out businesses to the clients/customers. However, the business need not be shut down completely as the employers can require their employees to work remotely from home.

- 2. If the employees refuse to comply with instructions from their employer to work from home, can disciplinary action be taken by the employer against the employees?**

The MCO does not stop the employer from instructing its employees to work from home. Therefore, disciplinary action can be taken against the employees who refuse to follow the instructions.

- 3. Can employers of non-essential business instruct their employees to come to work as usual or work on a half a day basis?**

Based on the MCO, employers are prohibited from requiring their employees to come to work at the business or office premises. Employers that instruct their employees to come to work during the MCO Period commit an offence under the Prevention and Control of Infectious Diseases Act 1988 and complaint can be lodged to the National Security Council.

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4. Can employers of non-essential business organised face-to-face meetings with their employees or require meetings with their employees on a one-on-one basis or in a small group setting?

No, employer is not allowed to organise face-to-face meetings with the employees or require meetings with the employees on a one-on-one basis or small group setting for work-related purposes as the main purpose of the MCO is to practise social distancing.

5. If the employer's business is categorised under essential business, can the employees refuse to come to work?

As essential business is permitted to continue operations at its business/office premises during the MCO Period, the employees of that business are required to be present for work. Failure to do the same would amount to absenteeism which is a serious misconduct which warrants a disciplinary action to be taken against the employee.

6. During the enforcement of the MCO Period, are employers required to pay the full salaries of their employees?

Yes, employers must continue to pay the full salaries and allowances of their employees during the MCO Period as the contract of service is still ongoing.

7. Can the employees' annual leave entitlement be deducted by employers or can employers compel the employees to take unpaid leave during the MCO Period as a result of the MCO?

Unless the contract of employment provides otherwise, employers are not allowed to deduct the annual leave entitlement of their employees as annual leave is supposed to be taken at the discretion and at the request of the employees. Employers are also prohibited from unilaterally requiring their employees to take unpaid leave during the MCO Period. Consent must first be obtained from the employees before requiring the employees to take unpaid leave.

However, do take note that the Government had announced on 16.3.2020 that employees with salaries under RM4,000 that are forced to take unpaid leave due to the Covid-19 pandemic for a period of at least month will be provided financial assistance of RM600 per month for a maximum period of six months. This financial assistance is available to those employees who are given notice to take unpaid leave beginning from 1.3.2020. Such



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application must be submitted by the employers on behalf of their employees by filing up this form (https://www.perkeso.gov.my/images/erp/LAMPIRAN_1_-_BORANG_ERPC_FINAL.pdf) starting from 20.3.2020.

8. If a business is severely affected by the enforcement of the MCO, can the employer retrench, temporarily lay-off and/or impose pay cuts as in order to cut costs?

Yes, employers suffering from severe financial difficulties as a result of the MCO may find it necessary to undertake retrenchments, lay-offs and/or pay-cuts of their employees.

However, retrenchment must be in compliance to the general principles of industrial and labour law and also in accordance with the Guidelines on Retrenchment Management as provided by the Ministry of Human Resources. Retrenchment must only be resorted to as a last resort as employers may opt for temporary lay-offs and/or salary reduction or reduction in working hours and only if there is a genuine redundancy in their workforce.

It must be noted even though employers are entitled to impose temporary lay-offs and salary reduction during these times of hardship, these may only be done after consultation and with the consent of the employees. Lay-off benefits may be payable by who are temporarily laid off under the Employment (Termination and Lay-Off Benefits) Regulations 1980.

9. What is the action that can be taken by an employee that is forced to take unpaid leave or where his or her annual leave is deducted without prior consent?

For an affected employee who earns more than RM2,000.00 but not exceeding RM5,000.00, the affected employee may lodge a complaint online through the Department of Labour official email or may lodge a complaint to the nearest Department of Labour after the MCO Period

For an affected employee earning more than RM5,000.00, a civil suit can be filed the employee against the employer for breach of the contract of employment and to claim for the unpaid wages.

Furthermore, all employees (regardless of whether they are subject to the Employment Act 1955) have the right to file a representation under Section 20 of the Industrial Relations Act 1967 if they consider that the pay cut or forced unpaid leave is a serious breach



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of their employment contracts and amounts to constructive dismissal by the employer.

10. Can the MCO Period be considered as frustration of the contract of employment?

No, because the failure of the employer and employee to fulfil the contractual obligations does not involve long period of time and is not permanent.

11. Are employees entitled to apply for sick leave during the MCO period?

Employees are entitled to apply for sick leave during the MCO period owing to the simple fact that the contract of employment is still continuing. Therefore, the sick leave would be deducted from the employee's entitlement as per their contract of employment and they are not required to work from office premise nor home.

12. What if employers and employees disobey the MCO's directives? Is it an offence? What are the legal repercussions?

Yes, it is an offence. Section 11(5) of the Prevention and Control of Infectious Diseases Act 1988 ("Act") provides that any person who refuses to comply with any direction such as in relation to isolation, observation or surveillance by the authorized officer in order to contain the outbreak, thereby commits an offence. Section 22 of the Act also provides that any person who obstructs and disobey any lawful order issued by the authorized officer also commits an offence.

Section 24 of the Act provides that any person guilty of an offence shall be liable upon conviction: -

- (a) In respect of a first offence, imprisonment for a term not exceeding two years or fine or both.
- (b) In respect of a second or subsequent offence, imprisonment not exceeding 5 years or fine or both.
- (c) In respect of a continuing offence, a further fine not exceeding RM200 for every day during which such offence continues.

It is also to be noted that on 16th March 2020, the Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 was gazetted where all States and Federal Territories in Malaysia are declared as infected areas.



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Regulation 7 of the Prevention and Control of Infectious Diseases (Measures Within the Infected Local Areas) Regulations 2020 also provides that any person who contravenes the Regulations such as contravening the MCO directives will be liable to a fine not exceeding RM1,000.00 or to imprisonment for a term not exceeding 6 months or both.

Thank you.

Yours sincerely,

MALAYSIA RETAIL CHAIN ASSOCIATION



Datuk Seri Garry K.S Chua
MRCA President 2016 - 2020

Prepared By,

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