

Coronavirus and the work place: what employers need to know

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After more than six months of protests, the Hong Kong economy has been dealt yet another devastating blow with the spread of the Coronavirus. On 30 January 2020, the World Health Organization declared the Coronavirus a Global Health Emergency. The Hong Kong Government announced that all civil servants may work from home (save for essential services) until at least 7 February 2020, while continuing to review the situation as the epidemic develops. The private sector has been advised to follow suit, with some companies adopting a similar approach whilst others are determined to continue business as usual despite widespread anxiety in the city.

Employers face significant challenges in these uncertain times. Whilst employers in some sectors can adopt a flexible approach to deal with this crisis, many are unable to run a business without employees being present at their work place. What are an employer's obligations during the outbreak?

The starting point is that a contract of employment continues during an outbreak, wages must continue to be paid and, to the extent possible, alternative arrangements such as working from home can be negotiated with employees. Employees who are certified unfit to work by a health care professional are entitled to be paid statutory and contractual sick leave pay, and do not need to work.

If attendance at the work place is essential for performance of an employee's duties, an employer has a statutory duty to provide and maintain a safe working environment for employees pursuant to the Occupational Safety and Health Ordinance, which includes putting suitable policies and arrangements in place for staff who may have recently travelled to affected areas or have a reason to self-quarantine for a period recommended by health professionals, in order to safeguard the health and safety of the rest of the workforce. An employer cannot enquire into the specific details of an employee's illness unless such information is volunteered; generally employers should rely on a medical certificate issued by the employee's health care provider.

If an employer is unable to provide a safe working environment for its employees, the employer may not compel employees to attend work. In these circumstances, we advise employers to engage in a discussion with employees about alternative work arrangements. Employers should note that pursuant to section 10 of the Employment Ordinance, all employees have the right to terminate their employment contract immediately without notice or payment in lieu, if he or she reasonably fears physical danger by violence or disease such as was not contemplated by his or her employment contract expressly or by necessary implication. Unless an employee has committed some other serious misconduct, it is unlikely that an employer would have the right to summarily terminate an employee for refusing to comply with the employer's order to attend work for fear of his/her health and safety.

The terms of an employment contract can of course be amended with the consent of both parties and employers may also negotiate with employees for them to take annual leave, unpaid leave, or even a reduction of wages for a temporary period to alleviate financial stress placed on the business.

Due to the slow-down in many business sectors, redundancies may be inevitable. Employers are entitled to lay staff

off in accordance with the law but must also be mindful that when terminating employees, they must not contravene any of the discrimination ordinances. For example, it is unlawful to terminate employees on sick leave or employees who have obligations to care for a close family member who is unwell. The true reason for termination is a question of fact that would need to be proven if a terminated employee were to bring a claim of discrimination following dismissal.

The common law imposes an overarching duty of mutual trust and confidence in an employment relationship; both employers and employees must act in good faith towards each other. The Hong Kong Labour Department has issued various guidelines which encourage employers to have contingency plans in place, for example during the peak influenza season. These policies, devised and communicated ahead of time, would ameliorate some uncertainties and anxiety among the workforce during these trying times.

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