



The Coronavirus outbreak – what shall enterprises need to pay attention to?

The Coronavirus (2019-nCoV) outbreak has been spreading across Asia and has been declared as a global health emergency by the World Health Organisation (WTO). The Virus causes severe respiratory problems and has swept across China after emerging from the city of Wuhan in the district of Hubei. Cases have increased to roughly 30,000 individuals across China with 18 other countries reporting cases. The infection has impacted upon businesses, some of which have had to halt operation, either in part or in full, and thus has had ramifications for management and employees alike.

Hong Kong is currently in a difficult position as its proximity to the mainland and dense population may make it easier for the virus to spread quickly – 24 people have currently been infected. However, the Hong Kong Special Administrative Region's Government have taken various precautions to mitigate the danger of an outbreak in the area.

Travel Bans and Quarantine

As of the 5th of February, the Government have imposed a 14-day mandatory quarantine against all those entering Hong Kong from the mainland using the powers laid out within the Prevention and Control of Disease Ordinance (PCDO) (Cap 599) article 7(1) which gives the Secretary for Food and Health sweeping powers to prohibit the admission of persons and the isolation/ quarantine of any person. The measure will come into force on the 8th of February, giving time for the public to make appropriate preparations.

This is an extension of the restrictions that were in place for those who had visited Hubei Province and will ensure that there is a reduction of cross-boundary flow of people, thereby reducing risk of transmission. These measures were made after the Government received advice from the expert advisory group the "Steering Committee cum Command Centre" which raised the response level under the "Preparedness and Response Plan for Novel Infectious disease of Public Health Significance (2020)" to 'Emergency level'.

According to Part 5 of the regulations (Cap. 599A) accompanying the PCDO, violating the quarantine will be liable to a fine of a maximum penalty of \$5000 and imprisonment of 6 months on conviction. To guarantee this, the Government have introduced the use of electronic wristband to monitor those under isolation measures.

These measures have been followed by the closure of 10 control points into the country from the mainland, with only 2 control points in operation. This is another measure which is an attempt to restrict the number of persons entering into the region.

However, these measures will not affect freight services of goods, in particular, food and medical equipment. Furthermore, persons who work in this industry who need to frequently travel between the mainland and Hong Kong will be exempt from the mandatory quarantine, they must simply adopt necessary hygiene practices. This is to ensure that supplies continue to enter the market in Hong Kong, necessary to stop purchasing panic.

Flexible work arrangements

The government have announced the work-from-home arrangement for some 176,000 civil servants, the suspension of public services, cancellation of Government events. They have also appealed to enterprises to make flexible work arrangements for employees to tie into with the Governmental strategies to fight the disease, yet no specific legislation has been enacted to force enterprises to follow this advice. Most in the private sector have adopted these recommendations.

In relation to this advice, if the individual knows that they are infected, or if an employer who has care over any person who is believed to be infected, and exposes other persons to the risk of infection by carrying out any trade, business or occupation, they commit an offence under Article 32 of the PCDO Regulations and are liable to a fine at level 2 and imprisonment for 6 months.

Crucially, the Government will be setting up a fund of over \$10 billion to offer assistance to enterprises in order to pay for extended employee leave, more details will be released in due time.

The relaxation of visa rules for Foreign and Domestic Helpers provides an example of governmental provisions. The Philippine Governments temporary ban on all those who have visited Hong Kong has pushed the HKSAR to announce a flexibility arrangement to increase visas for FDHs whose contracts are due to expire. Through Clause 15(a) of the standard employment contract, authorisation has been given to extend the contracts until the 31st of May if proper documentation is submitted to the Immigration Department.

If an employee is required or ordered by a Health Officer to be put under medical surveillance or quarantine, he will be issued with a medical certificate with the statement of "under medical surveillance". The employer must then grant that employee sick leave in accordance with part 7 of the Employment Ordinance or the relevant employment contract.

Under Article 35 of the Ordinance, this pay is granted at an equivalent rate of 4/5ths of the average daily wages earned by the employee in the prior 12 months. Under Article 33(4B) the employer is also unable to terminate the contract whilst the employee on sick leave, and a breach of any of these conditions will be subject to a fine at level 6. In the case of terminating the contract, the employer will also be liable to pay the employee 7 times the amount that the employee earned by the employee during the 12 months immediately before termination.

In general, it is advisable for businesses to reorganise their immediate operations by considering:

- The difficulty of international transportation of goods and services,
- The impossibility of connected travel in Hong Kong to and from the mainland,
- The time periods that can be organised for the fulfilment of contractual obligations,
- The invocation of any force majeure or unforeseen clauses,
- The benefits of insurance clauses, in particular with regards to upcoming funds from the HKSAR Government
- The management of administrative or judicial proceedings in progress.

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- 1) Preparedness and Response Plan for Novel Infectious Disease of Public Health Significance (2020)
 - https://www.chp.gov.hk/files/pdf/govt_preparedness_and_response_plan_for_novel_infectious_disease_of_public_health_significance_eng.pdf
- 2) Prevention and Control of Disease Ordinance and Regulation
 - <https://www.elegislation.gov.hk/hk/cap599?pmc=1&m=1&pm=0>
 - <https://www.elegislation.gov.hk/hk/cap599A?pmc=1&m=1&pm=0>
- 3) Foreign and Domestic Helpers
 - <https://www.info.gov.hk/gja/general/202002/04/P2020020400547.htm?fontSize=1>
- 4) Employment Ordinance Cap 57
 - Article 33(1): An employee who has been employed by his employer under a continuous contract for a period of 1 month or more immediately preceding a sickness day shall be paid by his employer sickness allowance in accordance with this section and section 35
 - Article 33: (4BA) An employer who contravenes subsection (4B) shall be liable to pay to the dismissed employee—
 - (a) the sum which would have been payable if the contract had been terminated by the employer under section 7; and
 - (b) a further sum equivalent to 7 times the daily average of the wages earned by the employee during—
 - (i) the period of 12 months immediately before the date of termination of the contract of employment
 - Article 35(2): The daily rate of sickness allowance is a sum equivalent to four-fifths of the daily average of the wages earned by the employee during—
 - (a) the period of 12 months immediately before the sickness day or first sickness day (as appropriate); or
 - (b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the sickness day or first sickness day (as appropriate), the shorter period,
 - (i) but no sickness allowance is payable in respect of a day on which the employee would not have worked had he not been sick and for which no wages would normally be payable by the employer

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