

VDB Loi Laos' Employment Alert

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Coronavirus: What Employers Should Know

As the infectious coronavirus disease (“**COVID-19**”) continues to spread rapidly, with more than 110,000 confirmed cases, which has prompted the World Health Organization (“**WHO**”) to declare the disease as a global pandemic, employers are facing a major challenge, particularly concerning health and safety risks in the workplace, travel restrictions, sick leave and benefit entitlements, and risk of workplace discrimination. Although there is no confirmed COVID-19 case in the Lao PDR as of this date, many health experts believe that the infection may be spreading undetected in the region, and it is only a matter of time before cases are diagnosed and reported. Therefore, it is vital that employers are prepared to combat and mitigate the situation effectively. This article briefly outlines employers’ essential obligations and the legal issues they may encounter in the case of a COVID-19 outbreak in the Lao PDR.

Labor Law No. 43/NA dated 24 December 2013 (the “**Labor Law**”) is the main law that governs labor and employment practice in the Lao PDR, and the Ministry of Labor and Social Welfare (the “**MLSW**”) together with the provincial and regional labor agencies (collectively the “**Labor Administration Agency**”) is the responsible authority to implement the employment laws and regulations of the Lao PDR.

What are employers’ obligations in an epidemic situation like a COVID-19 outbreak?

General obligations of employers under the labor laws and regulations of the Lao PDR

Article 117 read with Article 119 of the Labor Law requires employers in the Lao PDR to ensure that appropriate healthcare and safety standards are implemented to prevent and control the risk of diseases that can spread by exposure in the workplace. As part of this, employers are required to provide the necessary safety equipment, information, recommendations, training, and protection to all their employees to enable them to undertake their work safely. As per Article 122 of the Labor Law, employers must inspect and assess the risks to safety and health at their workplace regularly. Employers must also formulate internal regulations, in consultation with the employees’ representative(s), including an occupational safety and health (“**OSH**”) policy. In addition, all labor units are required to comply with the Decree on Occupational Safety and Health No. 22/G dated 5 February 2019 (the “**OSH Decree**”) and other applicable OSH laws and regulations, including international labor standards that are applicable to the Lao PDR. For violations of any legal obligations under the Labor Law, employers are subject to fines, temporary suspension of business, withdrawal of their business license, and civil proceedings being brought against them, depending on the nature of the violation.

COVID-19 specific obligations of employers in the Lao PDR at this stage

On 2 March 2020, the Task Force Committee for Prevention and Control of COVID-19 of the Lao PDR (“**COVID-19 Committee**”), in consultation with the Ministry of Health, issued multiple notifications that are aimed at preventing and controlling the spread of COVID-19 in the Lao PDR. Notification No. 004 on Implementation of the Measures to Prevent, Control and Prepare for the Spread of COVID-19 in the Lao PDR specifies two key guidelines that everyone should follow:

- Anyone who has recently travelled from a COVID-19 affected area should self-isolate for at least 14 days; and
- If anyone has a fever, cough, or any other symptoms of the virus then they should be examined for plausible COVID-19 infection.

The COVID-19 Committee also issued another notification calling for the immediate cancellation, suspension, or postponement of all cultural events, celebrations, parties, and activities in order to avoid public gatherings so as to prevent local transmission of COVID-19 in the community. If cancellation or postponement is not possible, the organizer must take necessary precautionary measures and should not allow anyone with a fever or other COVID-19 symptoms to participate.

From a legal perspective, all employers have a duty of care towards their employees as discussed above and therefore, employers must ensure that they and their employees strictly comply with the above notifications so as to avoid an occupational hazard and any breach of their obligations under the Labor Law.

On 11 March 2020, MLSW issued two notifications: (i) Notification on the Prevention Measures, Control and Respond to COVID-19 in the Lao PDR (No. 0709/MLSW, dated 11/03/2020) (“**0709 Notification**”) and (ii) Notification on Prevention and Control of COVID-19 relating to Foreign Employees Working in Laos and Lao employees who Work Overseas, including Lao employees who have returned to Laos from Overseas (No. 0710/MoLSW, dated 11/3/2020) (“**0710 Notification**”).

According to the 0709 Notification, the employers are required to implement the following in their labor units:

- Provide safety equipment and facility for prevention of COVID-19 in the labor units such as soap, sanitizers and face masks without any cost charged to their employees.
- Should closely monitor employees every day. If anyone has fever, cough or breathing difficulty then the employee should be referred to hospital for health examination;
- Avoid sending employees to COVID-19 affected countries and in case of foreign employees, the employer should ensure that the guidelines issued by the COVID-19 Committee (Notification No. 02/TFC, dated 2 March 2020) are strictly followed; and
- If the employer requires employees to take leave, then they have to pay salary for the leave period.

The 0709 Notification also includes instructions for employers on importation of foreign employees into the Lao PDR. If any employer desires to import foreign labor, then it must avoid importing from COVID-19 affected countries or provinces. Before entering to the Lao PDR, all foreign employees must get through a temperature examination and other processes in the immigration checkpoints, both at the airport and other international checkpoints as advised by the COVID-19 Committee.

According to 0710 Notification, the employers are required to cooperate with relevant authorities regarding import of foreign employees to work in the Lao PDR at this stage. Employers who are sending Lao employees to work in overseas, including Lao employees who are returning from overseas, especially to/from COVID-19 affected countries must comply with the notices from the Taskforce Committee for Prevention and Control of COVID-19 strictly (please refer to our employment alert for summary of the Taskforce Committee’s notifications).

If any employer suspects or discovers that an employee has COVID-19, it shall **immediately report it to the Skill Development and Employment Department** of the Ministry of Labor and Social Welfare.

We strongly recommended that employers adhere to above guidelines and devise a response plan based on these guidelines. It is also recommended that the employers also refer to the guidelines that have been issued by WHO and the International Labor Organization (“**ILO**”) on measures to combat COVID-19 at workplace.

WHO guidelines to combat COVID-19 at workplace

On 27 February 2020, WHO issued general guidelines for businesses to be prepared to combat the spread of COVID-19 in the workplace (“**WHO Workplace Guidelines**”) (<https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf>). One of the key recommendations is to

stay abreast of travel recommendations before having employees travel to a COVID-19 affected area (<https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak/>).

WHO has issued separate guidelines on the rights, roles, and responsibilities of health workers and other employees in the health sector and the key considerations for OSH (“**WHO OSH Guidelines**”) (https://www.who.int/docs/default-source/coronaviruse/who-rights-roles-respon-hw-covid-19.pdf?sfvrsn=bcabd401_0).

Employers can also refer to the ILO working paper: **SARS - Practical and Administrative Responses to an Infectious Disease in the Workplace**, which provides comprehensive guidelines for preparing an action plan and strategy to respond to health-related emergencies in the workplace due to exposure to an infectious disease (https://www.ilo.org/global/topics/safety-and-health-at-work/resources-library/publications/WCMS_108546/lang--en/index.htm).

Can employees refuse to come to work in case of a COVID-19 outbreak?

According to Article 8 of the OSH Decree, employees are entitled to refuse to work if they consider that there is a significant risk to their health and safety at the workplace. However, the OSH Decree does not specify how such risk is assessed. If an employee or group of employees refuses to work due to fear of contracting COVID-19 in the workplace, the employer cannot force them to work or take adverse measures against them, unless the employer has taken preventive measures and there is no reasonable justification for their refusal. It is advisable that employers consult with the employees or their representative to get a majority opinion if such situation arises, and also seek guidance from the MLSW and the Lao Federation of Trade Unions regarding whether or not there is significant risk of exposure in the workplace. Currently, the MLSW has not issued any guidelines for assessing and managing risk due to COVID-19 in the workplace.

According to the WHO OSH Guidelines, employees in the health sector are entitled to refuse to return to a work situation where there is continuing or serious danger to life or health until the employer has taken any necessary remedial action. It also entitles workers to remove themselves from a work situation that they have reasonable justification to believe presents an imminent and serious danger to their life or health. When a health worker exercises this right, they are protected from any undue consequences. Technically employers in the Lao PDR are not required to follow these guidelines, as the Lao government has not yet officially adopted them; however, under the OSH Decree, employees would be protected from undue consequences.

Can employers require employees to stay home even if they are not suspected of having COVID-19?

Both employers and employees have a joint duty under the Labor Law to avoid inflicting harm on other employees in the workplace, and to ensure health and safety in the workplace. Therefore, employers can require employees to stay at home or work from home for at least 14 days if they have reasonable grounds to do so, particularly where an employee has recently travelled to a COVID-19 affected area; came into contact with someone who is suspected or confirmed to have COVID-19; or has a mild fever (37.3 C or more) or is coughing or sneezing but without any history to suspect plausible contraction of COVID-19.

Can an employer restrict an employee from travelling to an area affected by COVID-19?

From a legal perspective, an employer cannot restrict an employee from travelling to certain places on their own time. However, employers should ensure that employees travelling to a COVID-19 affected area inform them prior to such travel and require employees to follow the travel guidelines issued by the Lao government and WHO, such as self-quarantining themselves upon their return for 14 days as discussed above.

Moreover, employers should also follow WHO's recommendations for international travel and refrain from requiring employees to travel abroad, particularly to any location that has already reported transmission of COVID-19.

What about sick leave, sick pay, and medical expense entitlements for employees in case of COVID-19?

There are no specific regulations as yet from the MLSW addressing this issue. Employers have to rely upon the Labor Law, their internal regulations, and the terms of the employees' employment contracts, although it is highly unlikely that employment contracts will have any clause dealing with this subject.

Sick leave and sick pay entitlements

From a Labor Law perspective, employees are entitled to statutory sick leave only when they are sick and have obtained a medical certificate. Therefore, employees that test positive for COVID-19 will be entitled to leave in accordance with the Labor Law and the employer's internal regulations. However, if an employee contracts COVID-19 due to exposure to the infection arising from their occupation, it may be recognized as an occupational disease, especially for employees in the health sector and those dealing with public directly on regular basis as part of their occupation, such as employees working in the aviation sector (although SARS or COVID-19 are not specifically listed as occupational diseases under the Decision on List of Occupational Diseases No. 3002, dated 16 August 2018). In such a case, the medical leave the employee takes cannot be deducted from their statutory sick leave entitlement under Article 56 of the Labor Law. According to Article 128 of the Labor Law, while an employee is undergoing treatment and rehabilitation for an occupational disease, they are entitled to receive their normal salary or wages for up to six months. If further leave is necessary to continue treatment and rehabilitation, the sick employee will be entitled to benefits in accordance with the Law on Social Security No. 54/NA dated 27 June 2018.

Furthermore, if the employer has asked an employee to work from home or stay at home despite not being sick as a precautionary measure for the safety of other employees, then such leave may be deemed by the employer as sick leave based on its internal regulations and the necessity of the prevailing circumstances. As per 0709 Notification of the MLSW, the employers are required to pay salary to their employees if they ask employees to stay at home. Similarly, the employer should also consider how to handle other situations, such as when an employee has voluntarily taken leave for quarantine purposes after returning from a COVID-19 affected area or refuses to come to work because of a serious risk to their health in the workplace amid a COVID-19 outbreak in the Lao PDR. It is noteworthy to point out that the WHO Workplace Guidelines recommend that employers count any self-isolation by employees after return from a COVID-19 affected area as sick leave.

Medical expense entitlements

If an employee is confirmed to have COVID-19, the employer should immediately inform the National Social Security Fund in accordance with the Social Security Law and/or its insurance provider (for any private medical insurance policy provided by the employer). If the employer has not registered the employee for social security benefits, the employer will be fully responsible for all medical expenses incurred by the employee, but not exceeding the statutory entitlement under the Social Security Law. As per the OSH Decree, employees who are on probation are also entitled to receive this benefit.

What are employers' obligations if the government orders a suspension or lay-off for businesses temporarily due to a COVID-19 outbreak?

According to the Labor Law, if an employer is ordered to suspend its business or the employer itself suspends its business for a temporary period, the employer must pay an allowance to its employees that is equivalent to at least 50% of their normal salary or wages. For temporary suspension by employers, they

have to consult and take approval from the trade union or employees' representatives, or the majority of employees in their labor unit.

Can an employer terminate an employee's contract if its business is adversely affected by a COVID-19 outbreak?

Currently, if an employer determines that it needs to downsize manpower because of the adverse effects of COVID-19 on its business, it will have to first consult with the trade union or employees' representatives, or the majority of employees in its labor unit and also report to the Labor Administration Agency regarding the necessity for retrenchment. In addition, an employer must give notification and pay termination compensation to the affected employees in accordance with the Labor Law.

Conclusion

The COVID-19 outbreak is expected to escalate and as such, poses challenges for both the government and businesses. Therefore, it is advisable for employers to be prepared with an action plan, to adhere to national and international guidelines, and to keep themselves regularly updated on developments and notifications from health agencies so as to respond quickly and effectively, if the situation escalates adversely.

This article is intended to provide an overview of the legal issues for general purpose only and therefore, the contents herein must not be construed as legal advice or as a substitute for legal advice for any specific matter or situation.