

# COVID-19: PEOPLE: FAQ ON MEASURES FOR EMPLOYEES (THAILAND)

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Legal Briefings - By **Warathorn Wongsawangsi** and **Sornnarin Kongkasem**

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COVID-19 cases have been confirmed worldwide and in Thailand since January this year. On 25 March 2020, the Government of Thailand declared a nationwide state of emergency from 26 March to 30 April 2020 and issued the first regulation order under the Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005).

On 2 April 2020, the second regulation order was issued. Public agencies have announced various orders and measures to counter the further spread of COVID-19, including curfews, closing areas with a high risk of spreading COVID-19, restricting travel, and prohibiting assemblies. Violators may be punished under law.

Businesses have been impacted as they try to prevent the spread of the virus in the workplace and are adopting many measures to resolve or alleviate their problems. These measures may affect their employees and raise certain legal issues. Importantly, any measure that an employer adopts must comply with the relevant labour protection laws.

We have received numerous queries from our clients and have summarised the most frequently asked questions about what an employer can do and also provide examples on how to be prepared and to have the necessary protocols in place.

**IF AN EMPLOYER WISHES TO ORDER ITS EMPLOYEES TO WORK FROM HOME OR BE SUSPENDED FROM WORK DUE TO THE SPREAD OF COVID-19 BUT THE PLACE OF BUSINESS IS NOT DIRECTLY COVERED BY THE PUBLIC AGENCY'S CLOSURE ORDER, IS AN EMPLOYER DUTY BOUND TO PAY WAGES TO EMPLOYEES, AND CAN AN EMPLOYEE'S LEAVE BE DEDUCTED?**

If a business is not impacted by the closure order but the employer would like its employees to work from home or suspend them from work, the employer is still duty bound to pay wages to employees and cannot deduct employees' leave.

**IF AN EMPLOYER WOULD LIKE TO TEMPORARILY CLOSE ITS BUSINESS IN WHOLE OR IN PART DUE TO THE SPREAD OF COVID-19 BUT THE PLACE OF BUSINESS IS NOT DIRECTLY COVERED BY A PUBLIC AGENCY CLOSURE ORDER, IS AN EMPLOYER DUTY BOUND TO PAY COMPENSATION TO EMPLOYEES AFFECTED BY SUCH A TEMPORARY BUSINESS CLOSURE?**

If the place of business is not directly covered by a public agency closure order, but an employer wants to temporarily close business in whole or in part, an employer is duty bound to make payment at the rate of 75% of wages to employees. The employer also needs to inform employees and the labour inspector of the temporary business closure at least three working days in advance.

**IF THE PLACE OF BUSINESS IS DIRECTLY COVERED BY A PUBLIC AGENCY CLOSURE ORDER, E.G. SPAS, CINEMAS, THEATRES, BOXING STADIUMS, WHICH RESULTS IN AN EMPLOYER BEING UNABLE TO ALLOW EMPLOYEES TO WORK AND EMPLOYEES BEING UNABLE TO WORK FOR THE EMPLOYER, IS AN EMPLOYER DUTY BOUND TO PAY WAGES TO EMPLOYEES?**

If the place of business is directly covered by a public agency closure order, resulting in an employer being unable to allow employees to work and employees being unable to work for an employer, this may be deemed to be a case where an employer and its employees are unable to perform their contractual obligations due to force majeure. An employer is then not duty bound to pay wages to employees per the "no work, no pay" principle set out in the Department of Labour Protection and Welfare's Guideline on Postponement of Songkran Holidays and Temporary Closure of Certain Places, dated 18 March 2020.

**WHERE IT IS NECESSARY TO TERMINATE EMPLOYEES DUE TO THE SPREAD OF COVID-19 OR LOSS OF BUSINESS, IS AN EMPLOYER DUTY BOUND TO PAY SEVERANCE AND INFORM ITS EMPLOYEES IN ADVANCE?**

Yes - an employer is duty bound to pay severance under the law and inform its employees in advance of the termination of employment by at least one wage payment period. Otherwise, an employer will need to make payment in lieu of advance notice to its employees.

## **CAN AN EMPLOYER REDUCE WAGES, WELFARE OR COMPENSATION TO EMPLOYEES OR CHANGE EMPLOYMENT CONDITIONS DUE TO THE SPREAD OF COVID-19 OR LOSS OF BUSINESS?**

No – an employer is unable to reduce wages, welfare or compensation of employees or change employment conditions, which would put employees at a disadvantage, except with the employees' consent. If employees consent to these measures, an employer should arrange for a memorandum or record of such consent in writing.

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These questions and answers are just some examples of the legal issues with which we are assisting clients. Even when a business is directly affected by the COVID-19 outbreak, an employer must carefully take into account laws, rules, notifications and the orders of relevant authorities when implementing any measure to prevent or resolve the situation in a workplace.

For example, if an employer wants to reduce expenses by not paying wages, but its business is not directly affected by a closure order from a public agency, the employer cannot raise COVID-19 as force majeure in order to do so.

These answers are initial comments only and any final advice would be subject to the Court's discretion on the context and severity of the COVID-19 pandemic in the future.

In this challenging COVID-19 situation, it is highly crucial that business operators impose measures to prevent the spread of COVID-19 in a workplace as well as keep abreast of new announcements and/or orders from local authorities in order to adopt suitable employment measures.

We have a team of lawyers with extensive experience in labour law and other relevant areas. If you would like to discuss any aspect of this article or any other legal issues, please contact us at Herbert Smith Freehills (Thailand) Limited.

[More on COVID-19](#)

## **KEY CONTACTS**

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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