

COVID-19: PEOPLE: RETURN TO WORK AND LABOUR COST MANAGEMENT - A CHECKLIST (HONG KONG)

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Legal Briefings

The COVID-19 crisis continues to create significant health, social and economic challenges world-wide. Impacted businesses are facing decrease in demand, financial distress as well as supply chain difficulties

In Hong Kong, many organisations are moving past their initial response phase as employees begin to return to the workplace and businesses implement cost management measures to ensure their ongoing viability. Preparing for contingencies and the early consideration of a broad range of cost management options will assist businesses navigate the period ahead. Below we outline key considerations for employers.

SUSTAINED REMOTE WORKING

For many businesses, mandating employees work from home has been an *ad hoc* response to the health crisis. It will now be a key pillar of business continuity planning as many organisation adopt split team arrangements and look to reduce office capacity as part of both safety and cost management. As greater numbers of employees work remotely on a more formal and long term basis, employers should consider the following questions:

1. Do you need to **vary the employment contract**?
2. Are your **health and safety** practices and policies [adequate](#)?
3. Are there specific **regulatory notifications** or requirements that need to be complied

with?

4. Is appropriate **technology and infrastructure** available and who should pay for tools like home internet, printers, secure document destruction?
5. Is there sufficient protection of **confidential information and intellectual property** where the lines between work and home become more blurred?
6. Have your IT policies and practices been updated to reflect increased usage of online tools and applications for communications and document sharing and [signing](#)?
7. Do you need to **amend remote working policies** or **requirements** on matters such as childcare arrangements, work expenses, recording of working hours etc?
8. With less face to face time, are **performance metrics** appropriate and truly reflective of contribution?
9. How can managers maintain **team engagement** and a strong **corporate culture**?
10. Where employees **work from another country** to their usual work location, are you compliant with local laws such as those regulating employment arrangements, health and safety, workers compensation and insurance, social security, personal and company tax, and data protection?

ADDITIONAL SAFETY MEASURES IN THE WORKPLACE

As employees return to the workplace, additional measures must be adopted to meet health and safety obligations and minimise business disruption. Employers may consider:

1. **Scaling down meetings and events:** Non-essential events will likely continue to be deferred or held virtually for some time. Critical work meetings will be scaled down in terms of frequency, duration and attendees.
2. **Safe distancing:** Employers may seek to increase the physical space between people including by reconfiguring work stations or adopting split team or staggered working hour arrangements where appropriate. Employee consent may be required for changes to contractual working hours and location.
3. **Additional safety equipment:** Employers may provide equipment such as masks and hand sanitiser and require their use in the workplace. Temperature checks and health declarations for workplace attendees may also be implemented subject always to compliance with data protection and anti-discrimination laws.
4. **Health and safety training:** Providing up to date training and information on health

and hygiene to employees in line with guidance from the government and health advisors will be essential in complying with obligations under health and safety laws.

5. **Safety directions:** Employees suspected of having COVID-19 may generally be directed not to attend the workplace until they obtain medical clearance. Organisations may also consider whether they will require employees to report suspected cases and, in doing so, how to balance protections under data protection and anti-discrimination laws with safeguarding employees and others.
6. **Incident response:** A clear response plan for suspected or confirmed cases in the workplace will be critical. The plan must consider various elements such as health and safety of others in the workplace, mandatory notifications, appropriate internal and external communications and managing operational disruptions.
7. **Disciplinary matters:** Employers should anticipate and plan for how they respond to disciplinary matters. For example, how will the organisation respond where an employee refuses to return to the workplace? Or where an employee is charged with breaching mandatory quarantine? Or where an employee undertakes personal travel and is then prevented returning to the workplace? While the specific circumstances will need to be considered, early consideration and planning of such issues will allow the organisation to respond quickly in a considered and consistent manner.

COST MANAGEMENT

The [International Labour Organisation](#) has estimated that 10.5% of working hours globally will be wiped out in the second quarter of 2020 due to COVID-19. It is not surprising that many businesses are already adopting cost saving measures in respect of their labour force. In Hong Kong, key measures include:

1. **Mandated leave:** Where there is no contractual right to direct that leave be taken, employers should obtain consent regarding taking paid annual leave or unpaid leave. Alternatively, employers may require annual leave to be taken if they have followed the consultation and notice provisions set out in the Employment Ordinance (**EO**) or where there is a business shutdown as envisaged by the EO.
2. **Reducing hours and pay:** Any reduction in working hours and pay must be agreed by the employee and the employer failing which employers may face penalties of up to HK\$350,000 and imprisonment of up to three years. In certain circumstances, wage offences committed by a company may result in a director, manager, secretary or other similar officer of company being guilty of the same offence and subject to person fines and imprisonment.
3. **Non-payment or delayed payment of bonuses:** Before cutting bonus payments employers must consider whether the bonus is truly discretionary otherwise it may fall

within the statutory end-of-year payments provisions of the EO.

4. **Variation of pay structures:** So that pay aligns with productivity and revenue, employers may look to vary remuneration structures to a lower fixed salary and increased variable component linked to performance or revenue. Any variation in pay structures will need to be agreed in writing with affected employees and align with any regulatory expectations for example, the Guidelines on a Sound Remuneration Systems issued by the Hong Kong Monetary Authority.
5. **Redundancy:** While, in Hong Kong, the process of dismissing employees for redundancy is relatively straightforward, certain aspects require careful management. For instance:
 - a. **Impacted employees:** There are broad prohibitions on dismissing certain employees who are on paid sick leave, who are making a Employees' Compensation claim or who are pregnant or on statutory maternity leave. Further, any selection criteria for identifying impacted employees must not be unlawfully discriminatory (for example, based on an employee's sex, disability or race).
 - b. **Termination payments:** Employers will need to consider whether bonus payments fall within the statutory end-of-year payments provisions of the EO (see above), and ensure that all termination payments are made within seven days from the date of termination.
 - c. **Notifications:** All relevant notifications, such as those to tax and immigration authorities and provident fund trustees, must be made in a timely manner.
2. **Government support initiatives:** The Hong Kong government has announced an Employment Support Scheme (**ESS**) open to all employers who have been making Mandatory Provident Fund contributions or who have set up an Occupational Retirement Scheme (save for certain government institutions and government related employers). Under the ESS, the government will provide a wage subsidy of up to HK\$9,000 per month for each employee for the period from June to November 2020. During the subsidy period, employers will not be permitted to implement redundancies. The Hong Kong Government has also announced sector specific relief and support for certain small and medium sized enterprises. More details are available on the government [website](#).

For further information, please contact us or see our [COVID-19 hub](#).

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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