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By Duong Kim

Despite layoffs across many enterprises caused by the current coronavirus epidemic, some firms, especially those operating in textiles and garments, have been pushing up operations.

The Ministry of Labour, Invalids and Social Affairs has just submitted to the prime minister a fresh report on the coronavirus (COVID-19), involving survey of over 180,000 enterprises in 30 provinces and cities nationwide. Results showed that 553 enterprises have had to scale down their performance, and another 322 have completely shut down.

Further details revealed that as many as 9,000 employees have been hurt by the epidemic. Two-thirds of them are working in agri-forestry-fisheries, water and waste treatment, management, and logistics. Besides that, the epidemic outbreak is causing ever more hardship to enterprises involving textiles and garments, hotels, restaurants, and manufacturing.

According to the report, enterprises of many sectors

No-one can say with confidence what sort of economic growth might be at risk from the current coronavirus, or COVID-19, outbreak, but it is becoming obvious that the economic and trade implications can be substantial in the near term.

The extent to which the virus could cause widespread economic losses depends on at least three things: the duration and strength of the virus; decisions by governments to the virus spread; and the reaction of citizens and firms.

The first point is obvious – the trajectory of the virus spread is perhaps better left to doctors and others to consider. However, clearly for companies, the longer this drags out and affects people in more places, the worse the situation becomes for business. If it somehow is solved or managed in relatively short order, there will still be implications for the economy even if the overall impact is less.

lamented over their difficulties in maintaining operations – however, many have made efforts to improve the livelihoods of their staff members. They also insisted that labour suspension is only a temporary solution.

Leather footwear exporter Golden Top Co., Ltd, founded in 1995 in the northern city of Haiphong, allowed its workers a month off to protect them from the outbreak. A company representative told *VIR* that the delay in importing raw material from China forced operations to be suspended.

In another case, an anonymous source from a large Japanese manufacturer of cameras and printers, which operates many big factories in Vietnam, also told *VIR*, “Currently, suppliers from China are closed indefinitely, leading to the interruption of manufacturing of components.”

On the flip side, enterprises are finding solutions to temporarily overcome the impact from COVID-19. Vu Mai, director of human resources at Sheraton Hanoi Hotel said, The hotel staff have been on a leave of absence since last year. Therefore, we decided to arrange a temporary period of time for our staff to be

The second point matters a great deal – governments have the ability to improve or worsen economic outcomes. They have a fine line to walk in trying to protect citizen health while also supporting the economy.

At the extreme end, governments could decide to order mandatory quarantine on all citizens (or nearly all citizens, as essential personnel would still be needed to manage cases at clinics and hospitals and to enforce the quarantine). This would effectively shut down the entire economy.

The incubation period of the virus is still unknown, but recent estimates suggest that 14 days may be insufficient. Quarantine in whole or in part for weeks on end will severely disrupt the economy.

The business implications of prolonged shutdowns can be significant. The overwhelming majority of global companies are small, and they do not have deep pockets to

Businesses comply with directives

The global coronavirus epidemic has caused massive disruption to businesses and may impact certain contractual relationships, either with clients or employees. **Minh Nguyen**, senior associate and head of dispute resolution practice at ACSV Legal, discusses notable changes in regulation which could directly affect daily business operations in Vietnam, and pores over certain legal issues that Vietnamese-based companies might encounter due to the epidemic.



At the end of last month, the prime minister issued Directive No.06/CT-TTg which set out a number of multifaceted measures to prevent the spread of the novel coronavirus, or COVID-19.

A few days later, the Ministry of Labour, Invalids and Social Affairs (MoLISA) issued Official Dispatch No.01/CD-LDTBXH requiring Vietnamese-based companies to temporarily cease accepting Chinese employees or employees from epidemic zones returning to work after the Lunar New Year holiday.

If employees already had come back to Vietnam and resumed work, the employers must inform the local health authorities of these cases and carry out health surveillance for such employees within 14 days after their entry into Vietnam. The MoLISA also ordered a temporary suspension on granting new work permits to expats coming to Vietnam from epidemic zones.

The 2012 Labour Code imposes obligations on employers to keep employees updated on the status of occupational safety and hygiene at the workplace and to propose solutions to eliminate or minimise relevant health and safety risks at the workplace.

It is therefore advisable that employers make an official announcement to all of their employees about the status of the epidemic and to take necessary measures at the workplace to prevent transmission of COVID-19.

Due to the epidemic, a company may encounter a temporary shortage of labour force when its employees are infected or suspected to be infected with the coronavirus, and therefore cannot perform their job. In such an event, the 2012 Labour Code allows an employer to temporarily shift an employee to another position to fill the vacancies, provided that the assignment does not exceed 60 accumulated working days within a year, unless otherwise agreed by the employee.

If an employee has to temporarily cease working because of an objective reason rather than the fault of the employer (for example due to the epidemic), the employer can negotiate a wage for work suspension with the employee provided that such a wage is not lower than the regional minimum wage stipulated by the government. As for temporary recruitment, should an employee take a long leave due to the epidemic, the employer can recruit a temporary employee under a labour contract of less than 12 months to fill the vacancy.

According to the 2012 Labour Code, an employer has the right to require an employee to work overtime any day to implement tasks to protect human lives in light of the epidemic and the employee cannot refuse. This entitlement will likely be invoked by companies operating in the health-care or pharmacy businesses during the epidemic.

Workplace accidents must also be taken into account. According to the 2012 code, a workplace accident is defined as an accident that has occurred during working hours in connection with job performance and causing bodily injuries or death.

Defining arguments

In the case of a workplace accident occurring, a company is required to inter alia immediately report fatal cases or serious injury cases affecting at least two employees to the inspectorate body of the local labour authority, and take the necessary actions to investigate mild injury cases or serious injury cases affecting only one employee; and be responsible for medical expenses of the affected employee(s) and/or compensate the affected employee(s) if the company is found at fault. Based on the definition of a workplace accident, one can argue that where an employee is infected with COVID-19 during working time this will be considered as a workplace accident. This argument might particularly be explored by employees

working while in direct contact with infected patients such as nurses or doctors.

If this argument succeeds, this will be a large financial burden on companies being considered at fault in letting employees be exposed to the virus during working hours. It is advisable for Vietnamese-based companies to consult the labour authorities about this issue to envision possible legal risks arisen.

The Labour Code allows an employer to unilaterally terminate the labour contract with an employee with three working days of advance notice when he or she is sick for a long time. This includes an employee being sick for 12 consecutive months in case of an indefinite-term labour contract, six consecutive months in case of a definite-term labour contract; and more than half of the contract term in case of a labour contract of less than 12 months, and remains unable to work after having received medical treatment. Accordingly, an employer may apply this provision when an employee is infected with and unable to resume work after a long period of time. Having said that, the employer must consider taking the employee back to work after they recover.

An employee can unilaterally terminate the labour contract with the employer with three days of advanced notice if he or she is sick due to being infected with COVID-19 and remains unable to work after having received treatment for 90 consecutive days in case of a definite-term labour contract, or a quarter of the contract term in case of a labour contract of less than 12 months.

If the employee is currently working under an indefinite-term labour contract, the advance notice period is 45 days.

Benefits for employees

The Ministry of Health announced on February 6 that infected people or infection suspects will receive free diagnosis, treatment, and medicine regardless of whether the person is a medical insurance

cardholder or not.

According to the 2014 Law on Social Insurance, when an employee is absent from work for treatment of the disease caused by the outbreak and such employee has been subscribed to a mandatory social insurance package, the employee’s monthly salary will be covered by the state’s social insurance fund at a standard ratio of 75 per cent of the salary of the preceding month before the sick leave.

Save for certain exceptions, the maximum period for sickness allowance is from 30 to 70 days per year, subject to the nature of the employee’s job and the number of years the employee has contributed to the social insurance fund.

An employee who has taken all sickness leave days, but has not yet recovered, is entitled to certain days of leave for convalescence within the first 30 days upon returning to work. The total number of convalescent leave days per year is from five to 10, subject to the decision of the employer and the trade union.

Convalescence allowance will be equal to 30 per cent of the basic wage currently being about VND1.5 million (\$65 per month) and will be calculated on a pro rata basis.

Some terms that come to mind when thinking of COVID-19, which business owners and managers may like to invoke, include force majeure and impediment. In the 2015 Civil Code, force majeure is defined as an event which is objectively unforeseeable and is not able to be remedied by all permissible and possible necessary measures.

Impediment is defined as a hindrance caused by objective circumstances which result in a person with civil rights or obligations not knowing that his or her lawful rights and interests have been infringed, not being able to exercise his or her rights or fulfil his or her civil obligations.

Although the terms are very commonly used in commercial contracts, there is no exhaustive list under Vietnamese law describing all circumstances these terms cover.

Therefore, the question of whether the epidemic and/or the resulting government restrictions constitute a force majeure or an impediment from a Vietnamese law perspective can only be answered after examining the specific wording of force majeure and/or impediment clause in the contract. ■