

## Points of law on work interruption

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The recent global coronavirus epidemic has caused massive disruptions 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 regulations which could directly affect daily business operations in Vietnam, and pores over certain legal issues that Vietnam-based companies might encounter due to the epidemic.



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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 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 the 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 jobs. 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 healthcare 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, 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 local labour authorities 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 Vietnam-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.

*Post path: <https://vir.com.vn/points-of-law-on-work-interruption-74154.html>*