

APAC COVID-19 FAQ

EDITION IV – 24 APRIL 2020



Employment Law Expertise Provided by
Asia Pacific Members of the



INTRODUCTION

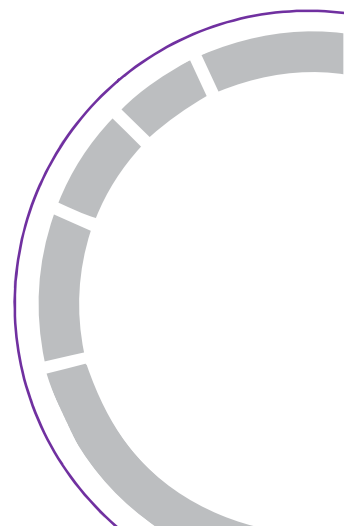
In the recent weeks, the Covid-19 situation has brought about great uncertainty for the world. Employers have not been spared. It can be challenging to wade through the ever changing myriad of notices, advisories and guidelines issued by the different governments.

To assist our clients, the Employment Law Alliance's APAC member firms have put together a set of FAQs to deal with some of the more common questions we have been asked relating to the new policies / advisories which have been issued in our respective jurisdictions as well as cost cutting measures which can be implemented to manage the cost of doing business.

The third edition of this paper was published on 17 April 2020 and can be found [here](#). As the situation is constantly evolving, we are providing weekly updates to our readers. This is the second edition and includes updates from Hong Kong, Japan and Taiwan.

Readers should take note that this information is accurate as at 23 April 2020. We encourage readers to keep abreast of developments in the countries of concern to them on a daily basis. Should you have any queries, please feel free to reach out to the contributors individually.

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HONG KONG

Q: Are there any government directions to shut down business (“Shut Down directives”)?

A: The following premises have been ordered to be closed until 7 May 2020:

- (a) Amusement game centres
- (b) Bathhouses
- (c) Fitness centres
- (d) Places of amusement
- (e) Places of public entertainment
- (f) Premises that are maintained or intended to be maintained for hire for holding social gatherings (commonly known as party room)
- (g) beauty parlours
- (h) establishments (commonly known as club or nightclub) that are open late into the night, usually for drinking, and dancing or other entertainment
- (i) karaoke establishments
- (j) mahjong-tin kau premises
- (k) massage establishments

Separately, effective until 7 May, any premises that is exclusively or mainly used for the sale or supply of intoxicating liquors for consumption in that premises must be closed. Such premises include bars, pubs, any part of a catering business premise / any area in a club house that is exclusively or mainly used for such sale or supply of intoxicating liquors for consumption in that part / area.

The Government has further issued directions for catering businesses, requiring them to, inter alia, not allow more than 4 persons to be seated together at one table.

Q: Are there any schemes to help businesses cope with the additional staff related costs resulting from the Covid-19 situation?

A.

1. To enhance Hong Kong’s ongoing work in the fight against the novel coronavirus infection and to provide support and assistance to industries and members of the public affected by the epidemic, the Government has set up a HK\$30 billion Anti-epidemic Fund (the “Fund”). The Fund will provide additional resources to strengthen the territorial-wide anti-epidemic work and will render support to the affected industries and employees. The Hong Kong Government announced a second round of the Fund on 8 April 2020.

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The first round of the Fund covers the following sectors: property management, construction, retail, food and catering, transport, convention & exhibition, fisheries, arts and culture, licensed guesthouses and travel agents. Not all of the subsidy schemes under the first round of the Fund are directed at employment-related issues, but some do, for example, the Anti-epidemic Support Scheme for Property Management Sector aims to provide an “Anti-epidemic Cleansing Subsidy” to property management companies and owners’ organizations in private residential and composite buildings, and subsidises them to provide the “Anti-epidemic Hardship Allowance” to front-line property management workers (i.e. cleaning and security workers). Each worker will be given a monthly allowance of HK\$1,000 for four months, subject to a cap of six headcounts per building block.

On 8 April 2020, the Hong Kong Government announced a second round of the Fund in light of COVID-19. One of the measures include introducing a HK\$80 billion Employment Support Scheme (“ESS”).

In relation to the ESS:

- The subsidy to be offered under the ESS is calculated based on 50% of the monthly salary of a specified month (any one month from January to March 2020 to be nominated by the employer), which is capped at HK\$18,000 (i.e. the maximum subsidy amount will be HK\$9,000), for a period of six months.
- In terms of eligibility, all employers who have been making Mandatory Provident Fund (MPF) contributions or who have set up Occupational Retirement Schemes (ORSO schemes) for their employees for employees are eligible.
- As condition to application for the ESS, employers have to undertake that they cannot implement redundancy during the subsidy period and that they will spend all the government wage subsidies in paying wages to their employees. The employees may be engaged in full-time or part-time work as each enterprise’s circumstances differ. After approval of the application, the number of employees on payroll shall not be less than the number of employees in March 2020. Should there be any reduction in the number of employees on the payroll within the MPF and the ORSO framework during the period compared to the number of employees in March 2020, the ESS subsidy will be adjusted with claw back and other penalty.
- Payment will be made in two tranches. Applications for the first tranche will start before the end of May 2020 till the first week of June 2020, with the aim of making the first payout to employers within June to help them pay the wages for June to August 2020. Application dates for the second tranche will be announced in due course, with payment to be made in September 2020 for paying

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the wages of September to November 2020. The detailed application and payment mechanisms are being worked out in consultation with stakeholders including the MPF trustees.

Our Chief Executive has said that 100 per cent of the wage subsidies provided by the Government have to be spent on wages. The employer cannot not deploy the money for other purposes and the Government will put in place very robust auditing after the event because they don't want to have detailed vetting before paying out.

It is otherwise hoped that more details and clarity regarding the application and eligibility criteria for ESS will be provided in the near future, especially after the Legislative Council meets to discuss, amongst other matters, the ESS on 17 April 2020.

Separately, the deadline for payment of tax for year of assessment 2018/19 that will be falling due will be automatically extended for three months, with details to be announced by the Inland Revenue Department.

2. Separately, the Hong Kong Commerce & Economic Development Bureau's SME Financing Guarantee Scheme (the "Scheme") is planned to be rolled out sometime in April. The Scheme aims to alleviate the burden of paying employee wages and rents by small and medium-sized enterprises which are suffering from reduced income, thereby help minimise enterprise shutting down and layoffs. The Hong Kong Government will provide a 100% guarantee for approved loans taken out by eligible enterprises, in hopes that this will greatly enhance the chances for businesses in securing loans. The maximum amount of loan per enterprise is up to the total amount of employee wages and rents for six months per enterprise, or HK\$2 million, whichever is the lower. Further details are expected to be announced nearer the time of the commencement of the Scheme.

In terms of eligibility, it is said that all Hong Kong enterprises who have been operating and holding a valid Business Registration Certificate for at least three months by the end of December 2019 can apply to the Scheme. The loan applicant needs to provide proofs that they have suffered at least a 30 per cent decline in sales turnover in any month since February 2020 compared with the monthly average of any quarter in 2019. The current definition of "small-medium enterprises" used by the Hong Kong SAR Government is any manufacturing business which employs fewer than 100 persons in Hong Kong, or any non-

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manufacturing business which employs fewer than 50 persons in Hong Kong. It is at present unclear whether the definition of SMEs for eligibility to apply for the Scheme will follow the aforementioned definition.

The maximum repayment period is three years from the first drawdown of the facility. To lessen the immediate repayment burden of enterprises, an option for principal moratorium will be provided under which loan applicants will only be required to pay interest in the first six months. Separately, an interest rate of the Hong Kong Prime Rate minus 2.5 per cent per annum (or equivalent). The guarantee fee will be waived.

3. Although not a subsidy scheme, pre-dating the COVID-19 outbreak, the Hong Kong Monetary Authority established the “Banking Sector SME Lending Coordination Mechanism” in October 2019 to provide a common platform for the banking industry to formulate solutions to support SMEs, including relieving SMEs’ cash-flow pressure via lending solutions. Since its establishment, Hong Kong’s banking sector has introduced several rounds of measures to help corporate and retail customers. Nearly 9 000 applications from SMEs involving principal repayment holidays, loan extensions and relief loans have been approved thus far, involving over HK\$57 billion. This has helped reduce the cash-flow pressure on customers and lessen the impact of the outbreak of COVID-19 on the local economy.



[Cynthia Chung](#)

Deacons
5th Floor, Alexandra House
18 Chater Rd, Central
Hong Kong

DEACONS
的 近 律 師 行

JAPAN

Q: Are there any government directions to shut down business (“Shut Down directives”)?

A: A nationwide state of emergency was declared on April 16, extending the declaration on April 7 over Tokyo and six prefectures to cover all the prefectures in Japan. Upon the declaration, the governors of 37 prefectures requested, while it is not enforceable, the temporary closure of places where many people gather such as entertainment facilities, sports/athletic facilities, theaters, schools, halls, museums, large-scale retail facilities, etc., until May 6.



[Rikisuke Yamanaka](#)

Ushijima & Partners
Sanno Park Tower 14F 11-1,
Nagatacho 2-chome
Chiyoda-ku, Tokyo, 100-6114
Japan



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A. Governmental advisories, such as Travel Restrictions / Country Lock Down / Distancing Policies

Q: Are there government directions restricting travel out of or into your jurisdiction (“Travel Restrictions”)?

A: Yes.

The entire Luzon (which includes the National Capital Region) was placed under Enhanced Community Quarantine (“**ECQ**”) from March 16 to April 12, 2020. The ECQ has been extended up to April 30, 2020. Some cities in Visayas and Mindanao have also been placed under ECQ, including: (a) Cebu City, which was placed under ECQ until April 28, 2020; and (b) Davao City, which was placed under ECQ until April 26, 2020.

Entry to and exit out of the country are restricted except for: (a) overseas Filipino workers (“**OFWs**”), balikbayans (returning Filipinos), and foreign nationals leaving the country; and (b) all returning OFWs subject to rules on mandatory quarantine. On April 2, 2020, the Philippine Overseas Employment Administration temporarily suspended the deployment of health care workers abroad until the national state of emergency has been lifted except for those health care workers with existing employment contracts.

Domestic travel, whether by land, air or sea is likewise restricted and checkpoints are placed. Mass public transportation is suspended. Home quarantine is required in all households, which limits movement of persons to generally accessing basic necessities such as for food and essential health services.

Business establishments, except those providing essential services or goods (“**Covered Enterprises**”), are ordered to shut down during the ECQ period. Covered Enterprises are allowed to remain open and operational subject to certain conditions (e.g., adoption of skeletal workforce, safety protocols, and social distancing measures). Covered Enterprises include:

1. manufacturing and processing of all food products, essentials, medicines and vitamins, hygiene products, and medical products;
2. retail establishments such as groceries, pharmacies, convenience stores and public markets;
3. logistics service providers;

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4. hospitals and medical clinics;
5. food preparation and water refilling stations limited to take-aways and deliveries;
6. delivery services of basic necessities;
7. banks and capital markets;
8. power, energy, water, IT and telecommunications suppliers, and waste disposal services;
9. export and business process outsourcing (“BPO”) companies;
10. airline and aircraft maintenance;
11. media establishments;
12. hotels (with restrictions);
13. energy companies and its third-party contractors; and
14. telecommunication utilities.

In relation to no. 1, operations of other economic activities in the supply chain of food and essential products, medicines, and medical products, such as the production of raw and processed materials, packaging, and other inputs, including distribution are allowed.

In relation to no. 9, the following activities of BPOs and their support services are also allowed throughout the ECQ period: (a) transfer of necessary equipment to set-up for the work-from-home (“WFH”) arrangements including provisions for troubleshooting support; (b) delivery or installation of telecommunication services by telecommunication companies; (c) delivery of logistical support; and (d) other support services necessarily required for their operations. Further, export enterprises are allowed to enhance their operations by deploying workers under an on-site or near-site accommodation arrangements or by providing point-to-point shuttle services.

Employees working in, or servicing, Covered Enterprises shall be permitted to pass through checkpoints upon presentation of either their Inter-Agency Task Force (“IATF”) identification cards (“IDs”) or their company IDs, and other required documents. Further, the IATF has launched the RapidPass system, which allows registered eligible users (such as employees of Covered Enterprises) and vehicles to quickly pass through checkpoints through the use of a QR code or an alphanumeric code for verification allowing for

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minimal contact with checkpoint personnel. Individual users can register online (RapidPass.ph) but bulk registrations by Covered Enterprises have to be made with the relevant approving government agency.

Q: Please state what implications such Travel Restrictions have in managing employees.

A: The Bureau of Immigration and the Department of Labor and Employment (“**DOLE**”) have suspended the processing of work visas and Alien Employment Permits during the ECQ period. Given the temporary suspension of processing of work visas and work permits, employers are unable to hire foreign workers during the ECQ.

Covered Enterprises, where possible, should provide for shuttle services or temporary accommodation to their employees.

BPOs and export-oriented companies, however, are required to provide temporary accommodations or shuttle services for their employees within or near the workplace.

Non-Covered Enterprises will have to temporarily cease operations during the ECQ period but they may implement telecommuting or WFH arrangements if the nature of the work permits.

Q: Are there any government directions to shut down business (“Shut Down directives”)?

A: Yes.

As stated above, only Covered Enterprises are allowed to open and operate during the ECQ period. Non-Covered Enterprises are ordered to physically close their establishments but if the nature of the work permits, they may implement WFH arrangements.

Q: Please state what implications such Shut Down directives have in managing employees.

A: Covered Enterprises:

- must generally adopt a strict skeletal workforce to support their operations (i.e., maximum of 50% of their workforce) unless the Department of Trade and Industry (“**DTI**”) allows the establishment to operate at a higher capacity;
- must observe safety protocols and social distancing measures

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- may adopt flexible working arrangements (“FWAs”) such as reduced workhours or workdays, rotation of workers, forced leave, and telecommuting or WFH during the ECQ Period subject to consultation with the affected workers and filing with the DOLE a notice regarding its adoption of FWAs.

Unless they are able to adopt telecommuting or WFH arrangements, work in Non-Covered Enterprises is suspended and the “no work, no pay” principle applies without prejudice to favorable company policy, practice, collective bargaining agreement or individual contract, and the employees availing of their accrued leave benefits.

The DOLE has encouraged large establishments to cover voluntarily the full wages of their employees during the ECQ period.

Q: Are there any government directions on policies employers must adopt to ensure no close physical interaction between persons at the work place (“Distancing Policies”)?

A: Yes.

As mentioned above, during the ECQ period, Non-Covered Enterprises are not allowed to open but may adopt telecommuting or WFH arrangements.

Covered Enterprises will have to adopt a skeletal workforce to support their operations (i.e., a maximum of 50% of their workforce), unless allowed by the DTI to operate at a higher capacity.

Covered Enterprises are also required to observe strict social distancing measures in the workplace. This means that their workers must keep a distance of at least three feet or one meter away from each other to reduce the possibility of person-to-person transmission.

Covered Enterprises are likewise encouraged to offer telecommuting and replace in-person meetings in the workplace with video or telephone conferences to further limit physical interactions in the workplace. Mass gatherings are prohibited.

In case a worker is suspected as having COVID-19, the employer is directed, among others, to: (a) provide the worker with a face mask to prevent the risk of spreading the infection; (b) isolate the worker

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immediately in a separate well-ventilated room in the workplace, away from other workers; (c) refer the worker to the company healthcare provider or the nearest local health center or hospital; (d) report the worker to the DOH; (e) observe other respiratory precautions when taking care of patients with flu or flu-like illnesses; and (f) decontaminate the work area.

In case a worker is sick or has fever but is not suspected to have COVID19, the employer is directed to advise the worker to (a) stay home and keep away from work or crowds; (b) take adequate rest and take plenty of fluids; (c) practice personal hygiene; and (d) seek appropriate medical care if symptoms persist.

Q: Please state what implications such Distancing Policies have in managing employees.

A: Considering that Covered Enterprises are only allowed to operate on a skeletal workforce and to observe safety and social distancing policies, they may implement FWAs (such as rotation of workers) after consultation with the affected workers.

B. Managing Employment Costs

Q: What cost-cutting measures can employers employ in light of the Covid-19 situation?

A: Employers may implement FWAs or alternative arrangements or schedules other than the traditional or standard arrangements of the employers as cost-cutting measures after consultation with their employees. Examples of FWAs that employers may adopt are:

1. reduction of work hours;
2. reduction of work days;
3. rotation of workers (employees are rotated or alternately provided work within the week); and
4. forced leave (employees are required to go on leave for several days utilizing their leave credits, if any).

Employers and the employees are encouraged to explore other alternative work arrangements in order to cushion and mitigate the effect of the loss of income of the employees.

Where necessary, employers may resort to temporary lay-off (for a period not exceeding six months) or terminations on the ground of redundancy or retrenchment, subject to compliance with substantive and procedural requirements.

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Q: How should employers implement the cost cutting measures

A: Labor Advisory No. 9, Series of 2020 ("**Labor Advisory No. 9**"), issued on March 4, 2020 requires employers to comply with consultation and notification requirements when adopting FWAs.

In case of temporary lay-off, redundancy or retrenchment, the employer must comply with the substantive and procedural requirements, which include service of a 30-day prior written notice to the affected employees and the DOLE.

Q: Are there any schemes to help businesses cope with the additional staff related costs resulting from the Covid-19 situation?

A: As of this writing, there are no schemes specifically meant to aid employers but the DOLE has implemented the Covid-19 Adjustment Measures Program ("**CAMP**") pursuant to Department Order No. 209, series of 2020 ("**DO 209**") that aims to benefit employees who have suffered loss or reduction of income because of the implementation of FWAs by their employers.

The CAMP provides for the grant of a "one-time financial assistance equivalent to Php5,000" to affected workers in a lump sum, non-conditional, regardless of employment status, in affected establishments.

Affected establishments are defined as those private establishments which have implemented FWA as defined under Labor Advisory No. 9, or which have implemented temporary closure as a mitigating measure due to the COVID-19 pandemic. The CAMP financial assistance of Php5,000 is intended for those who suffered loss or reduction in their regular wage or salary due to the adoption of FWA or temporary closure.

The application for financial support under DO 209 must be made by the employer through online submission. The documentary requirements include:

- (a) Revised Establishment Report Form on Covid-19 (which is essentially a report on the adoption of FWA or temporary closure containing a list of affected employees); and
- (b) Company payroll for the month prior to the implementation of the FWAs or temporary closure;
- (c) payroll account numbers of affected workers (those who suffered loss or reduction of income), and
- (d) company payroll's bank name.

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In case of non-availability of payroll, affected establishments may submit the following alternative documents:

- (a) worker's pay slip/ verifiable handwritten pay slip;
- (b) proof of payment of wages via logbook or ledger;
- (c) employment contract;
- (d) cash voucher or petty cash voucher;
- (e) authority to debit account sent by the employer to the bank for the wages of the employees;
- (f) SSS, PhilHealth and Pag-IBIG Alphalist or list of remittances;
- (g) BIR Form 2316; or
- (h) list of employees with 13th month pay.

However, on April 16, 2020, the DOLE announced with regret the suspension of acceptance of application for financial assistance under the CAMP effective 5:00 pm of April 15, 2020 since the available fund for the program of PhP1.6 Billion is now close to being depleted.

On April 16, 2020, the Department of Finance also launched the Small Business Wage Subsidy ("**SBWS**") Program for affected employees of small businesses to help mitigate the impact of the ECQ. The business must meet two criteria:

1. Size of business: The small business — whether a corporation, partnership, or sole proprietorship — must not be in the Large Taxpayer Service list of the Bureau of Internal Revenue ("**BIR**").
2. Impact of the ECQ: Small businesses under both Category A (non-essentials) that are forced to stop operations (i.e., temporary closure or suspension of work) and Category B (quasi-essentials) that are allowed to operate a skeleton force can apply for the wage subsidy for employees who are not able to work and did not get paid during the ECQ. Employers in areas where other forms of quarantine have been put in place by the local government unit may also qualify.

Under the SBWS Program, the government, through the SSS shall provide a wage subsidy of between PhP5,000 to PhP8,000 per month for up to two months, depending on the extent of the ECQ, to eligible employees. Applications are filed by eligible employers on behalf of their employees, subject to the

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eligibility requirements for employees. The SSS shall only accept applications from April 16, 2020 to April 30, 2020.

Employees who have received a subsidy from the CAMP shall be eligible for only the first month of the SBWS to avoid duplication.

To qualify for the SBWS Program, the following conditions must be fulfilled:

1. Small businesses must maintain the employment status of all eligible employee beneficiaries before the ECQ and throughout the SBWS period. This will be checked during the monitoring and evaluation stage. Non-compliance with this condition shall result in the employer refunding to the government the wage subsidy amount.

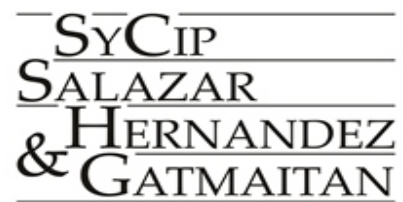
Employees cannot resign during the ECQ period.



[Dante T. Pamintuan](#)

SyCip Salazar Hernandez & Gatmaitan

SyCipLaw Center,
105 Paseo de Roxas
Makati City 1226
The Philippines



TAIWAN

Q: Are there government directions restricting travel out of or into your jurisdiction (“Travel Restrictions”).

A: Yes.

Recent orders from the Central Epidemic Command Center:

1. From March 17 until the end of this semester (i.e. July 15, 2020), no students and teachers of high school level and below may leave the country
2. From midnight March 19: All inbound non-Taiwanese individual is prohibited from entering the country, except those holding permanent residence, diplomat, business and other special permits. All inbound travelers, including Taiwanese citizens, shall submit to home quarantine for 14 days.
3. From midnight March 21: Travel advisory for every country in the world has been raised to a Level 3 Warning – meaning avoid unnecessary travel. All inbound citizens shall submit to home quarantine for 14 days.
4. From midnight March 24: No more transit flights through Taiwan.
5. From April 18 midnight: Inbound travelers who have visited Europe or Americas in the last 14 days (starting from April 4 midnight, Taipei time) should voluntarily provide a Health Declaration and Home Quarantine Notice before boarding. Those who make a false health declaration will be fined up to NT\$150,000. For those travelers who live with seniors (65 year-old or older), children (6 year-old or younger), or person with chronic diseases (such as cardiovascular diseases, diabetes or lung disease), or the dwelling of such travelers does not have a separate bedroom and bathroom, then he/she shall undergo the 14-day isolation at a quarantine hotel designated by the government.
6. From April 21 midnight: Inbound travelers who have visited South East Asia in the last 14 days (starting from April 7 midnight, Taipei Time) should comply with the same orders stated in point No.5.

In terms of employment, the Occupational Safety Guidelines state that employees may refuse to be dispatched to outbreak areas if the employer is unable to provide protective equipment or measures. If the employer continues to insist on making the trip, the employee may terminate the employment and seek severance pay.

TAIWAN



[Chung-Teh Lee](#)

Lee, Tsai & Partners
9F, 218 Tun Hwa S.Road, Sec. 2
Taipei, 106
Taiwan, R.O.C.

理慈 Lee, Tsai & Partners
Attorneys-at-Law

THAILAND

Q: Are there government directions restricting travel out of or into your jurisdiction (“Travel Restrictions”)?

A: The Thai government declared a state of emergency effective 26 March 2020, followed by the following travel advisory from the Civil Aviation Authority of Thailand to inbound travelers to Thailand:

1. An individual entering, transiting or transferring in Thailand through an international airport must fall under one of the following categories:
 - (a) persons exempted by the Prime Minister or Permanent Secretary of Ministry of Foreign Affairs, subject to certain conditions and prescribed time periods;
 - (b) carriers of necessary cargo, provided they leave Thailand promptly after delivery of such cargo;
 - (c) pilots and crew members of a flight entering Thailand with a clear departure schedule;
 - (d) persons on diplomatic or consular missions or under certain international organizations, government representatives performing duties in Thailand, or other persons belonging to international agencies that the Ministry of Foreign Affairs gives permission. Family members of the above are also included. Persons under this category must present a certificate of entry to Thailand issued by the Ministry of Foreign Affairs;
 - (e) Non-Thai nationals with work permits or who have been issued a Smart Visa; and
 - (f) Thai nationals with a certificate of entry to Thailand issued by Royal Thai Embassy or Royal Thai Consulate in their country of origin certifying that they are Thais returning to Thailand.
2. Persons under categories (d), (e) and (f) above must have a “Fit to Fly” Health Certificate issued no more than 72 hours before boarding.
3. Persons permitted to enter Thailand are required to strictly comply with disease prevention measures imposed by the government.
4. Immigration officers have the power to deny the entry of Non-Thai Nationals who have been tested positive for COVID-19, who are under suspicion of being infected or who refuse to undergo such test.

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The Civil Aviation Authority of Thailand has extended its order temporarily banning all inbound passenger flights through 30 April 2020. Unless the order is extended further, passenger flights are expected to be permitted to land as of 1 May.

The ban does not apply to state or military aircraft, emergency landings, technical landings without disembarkation, humanitarian, medical or relief flights, repatriation flights and cargo flights. Passengers arriving under these exempted flights are subject to a mandatory 14 day quarantine if arriving from “disease affected zones” (currently listed as China, South Korea, Iran and Italy), and the regulations under the Emergency Decree on State of Emergency.

The Thai government has not banned any outbound travelling, but strongly discourages all non-essential travel outside of Thailand.

Q: Are there any government directions to shut down business (“Shut Down directives”)?

A: The authority to shut down business is generally reserved for the provincial governments, and so there is no uniform, nationwide standard, except for a nationwide curfew from 10pm until 4am which has been in effect since 3 April 2020.

For Bangkok, the following businesses have been ordered to be closed from 22 March 2020 through 30 April 2020:

1. dine-in restaurants (exceptions exist for delivery, takeaway and restaurants in hotels catering to hotel guests, and hospital restaurants)
2. All state and private parks
3. shopping malls/department stores/other retail outlets (exceptions exist for food markets, drug stores and other shops essential for daily living) cafes inside convenience stores
4. non-food retail/markets
5. beauty salons, barber shops
6. tattoo shops
7. skating places, rollerblade places or similar
8. bowling places, amusement parks or game arcades
9. gaming centers and internet cafe like places
10. golf clubs and driving ranges

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11. swimming pools or similar
12. cock fighting places or places to prepare for fighting
13. amulet shops
14. exhibition or meeting halls or the like
15. educational places (e.g., schools or tutoring centers of any kind)
16. weight control centers, beauty clinics and other beauty service centers
17. health care places (spas, health massage places, beauty massage places)
18. pet care places and pet day care centers
19. traditional massage places
20. bath houses, Japanese onsen places and sauna places
21. theaters (including movie cinemas and other places like concert or show places)
22. gyms and fitness centers (health clubs)
23. entertainment places and similar places (possibly referring to entertainment places defined under Thailand's Entertainment Places Law)
24. boxing stadiums and boxing schools
25. sports stadiums
26. horseracing stadiums
27. sports arenas
28. playgrounds
29. places of entertainment, public places for performance
30. museums
31. libraries
32. all kinds of meeting rooms, function rooms
33. snooker clubs
34. nurseries, except those operated in hospitals

Certain types of liquor cannot be sold through 30 April, and so businesses whose only business is to sell liquor may effectively be shut down during this period.

Business operators who fail to comply with this closure order face penalties ranging from imprisonment of up to one year, a fine of up to Baht100,000, or a combination thereof.

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As for other businesses not required to close, employers in the private sector are encouraged to allow their employees to work from home if possible, and government agencies are encouraged to reduce the working days or hours of their employees.

Q: Please state what implications such Shut Down directives have in managing employees

A: Employers in businesses affected by the aforementioned shut down have a variety of options to consider, with the Thai government offering a growing list of relief measures to both employers and employees. Employers may also look to implement different leave arrangements (which can be coupled with salary reduction) depending on business needs.

1. Annual Leave. Employers may require employees to take accrued annual leave as well as a portion of future unaccrued annual leave as long as the employee has the minimum six days annual leave. For example, employee with 15 days annual leave may take 9 days of annual leave from 2021 and use it in 2020 if agreed to with employer. An employer cannot deduct any used and unaccrued annual leave from final salary if employee is terminated or resigns, unless employee provides written consent.
2. Temporary Suspension of Operations with Salary Reduced to 75%. Employers may elect to temporarily suspend the employees during the shut down period and pay them 75% of their regular wages by giving at least three days advance notice to the employees and the labour officials. It must be considered necessary for the employer to suspend operations due to a significant cause which affects the business operation of the employer in such a way that it is unable to carry on business as usual and that cause is beyond its control. Employee consent is not required, and the affected employees are not entitled to any additional social security relief currently provided in response to COVID-19.
3. No Work/No Pay. Employers and employees may agree to a temporary suspension without pay. Unlike with the option set out immediately above, however, employee consent is required. Employers may want to consider offering a sweetener/bonus once business resumes in exchange for consent. Employees may still be entitled to social security benefits based on recent relief measures approved by the Thai Cabinet.

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4. Force Majeure – Temporary Suspension of Operations with no Salary. Employers may elect to temporarily suspend the employees during the shut down period without pay by declaring a ‘force majeure’. The basic elements of ‘force majeure’ in Thailand are similar to those found in other jurisdictions, namely, an unforeseeable event not caused by the affected party which renders performance impossible and is not preventable by the affected party. Employers will need to consider this option with particular care, as the scope of a permitted ‘force majeure’ declaration has not been reviewed by Thai Supreme Court in labour context, and Thai courts in other commercial contexts have tended to read force majeure narrowly. For example, seasonal flooding in an area where there is regular, annual high tide was not considered a force majeure, as were general economic downturns and the 1997 Asian Financial Crisis. On the other hand, a government directive making performance impossible was ruled force majeure.

The Director-General of the Department of Labour Protection and Welfare gave a brief opinion during a media interview in March 2020 that a government directive on mandatory closure should be considered as ‘force majeure’ event. Such opinions are not legally binding, however, and so employers are not advised to rely on such opinions alone in deciding whether to declare a ‘force majeure.’ There should be a causal link between the ‘force majeure’ event and the employers’ temporary closure or suspension of business. Employer may be required to show that they made reasonable efforts to mitigate against the effects of the ‘force majeure’ event, and notwithstanding the mitigation, operation of the business became impossible.

Employees suspended as a result of ‘force majeure’ and who have contributed to the social security fund for a minimum of six months during the past 15 months may receive up to 62% of their first 15,000 THB in monthly wages for up to 90 days.

5. Termination. Employers may elect to terminate some employees ‘without cause’, in which case normal severance would apply. Employers will need to be mindful of potential ‘unfair termination’ claims.

Employees who have been terminated due to COVID-19 and who have contributed to the social security fund for a minimum of six months during the past 15 months may receive up to 70% of their first 15,000 THB in monthly wages for up to 200 days.

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For Thai nationals who are terminated but do not meet the above conditions, they may still be entitled to unemployment benefits up to 5,000 THB per month through June 2020.



[Andrew Wynne](#)

Price Sanond
16th Floor Q House Sathorn
11 South Sathorn Road
Bangkok 10120
Thailand



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