

The Coronavirus Disease 2019 or COVID-19 outbreak has adversely disrupted both global and domestic economies. The majority of business organizations all over the world have been significantly affected by this epidemic in many respects, and so do their employees.

Several business sectors in Thailand e.g. hotels, restaurants, entertainment venues, salon, spa etc. have been requested and/or ordered to cooperate with the Thai government by temporarily cease its business operation, either wholly or partially, in order to diminish and stop the outbreak.

By complying with the government's measures, many business sectors have encountered difficult labor situation as some of them has to limit labor density in the establishment, or temporarily cease and close whole or part of the working establishment resulting from closure of other business sectors i.e. business partners or customers. However, the Thai government has considerably taken this situation into account and urgently imposed several measures and legislation in order to alleviate business sectors and compensate employees who have been affected from the epidemic.

In this regard, we will provide the overview of 3 main scenarios which could be the employers' major concerns regarding their employees' entitlement during the outbreak and the governmental remedies provided to the impacted employees.

Scenario I: The businesses and/or the employees are impacted from COVID-19 pandemic but there is no mandatory closure from the government.

The business and/or employees may be affected by the COVID-19 outbreak either directly or indirectly under the following events:

(1) The employee has tested positive for COVID-19.

The employee diagnosed with COVID-19 is legally required to report to the Thai authority, refrain from work and receive medical treatments at the government approved facility. In this connection, such employee is permitted under Thai labor laws to take his/her accrued paid sick leave up to not more than 30 days. But if all such paid sick leave has been used up and such employee still cannot attend to work, he/she could take leave without pay for the absence period thereafter.



Such employee will be additionally entitled to the remedies given under the government's measures which are (i) reduction of the employee's contribution to the Social Security Fund to 1% for 3 months (from March to May); and (ii) extension of period for submitting contributions to the Social Security Office for 3 months (the compensation in March, April and May will have to be submitted in July, August and September, respectively) pursuant to the Announcement of Ministry of Labor Re: Criteria, Method and Condition for Reduction in Social Security Fund Contributions of Employer and Insured Person during Coronavirus Disease

2019 or COVID-19 dated 10 April 2020 and the Announcement of Ministry of Labor Re: Extending the Period for Submitting Contributions Form and Contributions of Employer and Insured Person, B.E. 2563 dated 9 April 2020.

(2) The employee wishes to self-isolate as a precautionary measure.

This is where an employee, who may be a person with the specific health problems or a person may have contacted with the infected person or disease, follows the government's social distancing measure by staying at home or self-quarantine for 14 days.

In this case, the employee may take the accrued sick leave and other entitled leaves (e.g. annual leave or leave without pay) during his/her absence, or the employer may allow such employee to work from home during his/her self-isolation period, with paid.

In this situation, the employee will also be entitled to the governmental remedies with respect to the reduction of employee's contribution to the Social Security Fund and the prolongation of submitting his/her contributions to the Social Security Office as mentioned in the above section.



(3) The employee is required to self-isolate under the government's measures.

This is where an employee is required to self-isolate under mandatory orders of the government which it could be a case that such employee has just returned from high risk countries/areas i.e. Republic of Korea, People's Republic of China, Macao, Hong Kong, Italy, Islamic Republic of Iran, Malaysia, Kingdom of Cambodia, Lao PDR, Republic of Indonesia and Republic of the Union of Myanmar.

Such employee may use his/her entitled and accrued leaves (e.g. sick leave, annual leave or leave without pay) during his/her absence, or the employer may order the employee to not come to work without having to pay wages to such employee, or the employer may allow such employee to work from home during his/her self-isolation period, with pay.

In this situation, the employee will still be entitled to the similar governmental remedies with respect to the reduction of employee's contribution to the Social Security Fund and the prolongation of submitting his/her contributions to the Social Security Office, and in case the employee has been ordered to refrain from work, he/she will also be compensated by the Social Security Office for unemployment due to force majeure approved by the employer throughout the period between 1 March 2020 – 31 August 2020 at a rate of 62% of daily wages for 90 days maximum.

(4) The employee is directed not to attend work by the employer as a precautionary measure.

This is a situation where an employer orders an employee to not attend work while such employee is able to work and not required to self-isolate. Such employee will be entitled to receive normal wages for the period he/she is directed to refrain from work and other benefits provided under the government measures i.e. the reduction of employee's contribution to the Social Security Fund and the prolongation of submitting his/her contributions to the Social Security Office, similarly to the above sections.

Scenario II: The business is temporarily closed (wholly or partially) due to decision of the employer (not mandatory closure).

This is a situation where the employer is not mandated to close its business but decides to temporarily cease its business operation due to necessity for whatever cause of significance that affects the business activities to the extent that the employer is unable to carry on its normal operation (other than a force majeure event).



In this case, the affected employees are entitled to receive wages of at least 75 percent of wages in working day received before the temporary cessation throughout the period and other benefits provided under the government's measures i.e. the reduction of employee's contribution to the Social Security Fund and the prolongation of submitting his/her contributions to the Social Security Office.

Please note that the employer is required to give an advance written notice to the employee for a period of not less than 3 working days prior to the date of business cessation.

However, in case the employer decides to temporarily cease its business operation due to the force majeure that affects the business activities to the extent that the employer is unable to carry on its normal operation where the employees will not be entitled to receive wages during such closure period, the affected employees will be compensated by the Social Security Office for unemployment due to force majeure approved by the employer throughout the period between 1 March 2020 – 31 August 2020 at a rate of 62% of daily wages for 90 days maximum according to the Ministerial Regulation Re: Receiving of Compensation in case of Unemployed due to Force Majeure from the Pandemic of Dangerous Communicable Disease Under Relevant Law Relating to Communicable Diseases B.E. 2563 (2020) and also other benefits provided under the government's measures i.e. the reduction of employee's contribution to the Social Security Fund and the prolongation of submitting his/her contributions to the Social Security Office.

Scenario III: The business is temporarily closed (wholly or partially) due to mandatory closure under the government's measures.

This situation is where the business has been forced to temporarily close, wholly or partially, due to the government measures and the nature of work of such business does not allow the work from home (or the like) arrangement.

If the mandatory closure of business according to the government's measures has given the employer no choice but to cease its operation whether partially or wholly, the employer may not have to pay wages to the employees since there is no work performed by employees (the "no work, no pay" principle shall be applied in this scenario).

In addition, this temporary business cessation may be considered as force majeure events under the Ministerial Regulation Re: Receiving of Compensation in case of Unemployed due to Force Majeure from the Pandemic of Dangerous Communicable Disease Under Relevant Law Relating to Communicable Diseases B.E. 2563 (2020) according to the press interview of the Director-General of the Department of Labor Protection and Welfare. Hence, the employer will not have to pay any wages to the employees during such closure period.

Although the employees may not receive their wages due to the business suspension caused by force majeure event, they will still be entitled to the governmental remedies with respect to (i) compensation for unemployment due to force majeure during the mandatory business closure period at a rate of 62% of daily wages for 90 days maximum, between 1 March 2020 to 31 August 2020; (ii) reduction of employee's contribution to the Social Security Fund; and (iii) prolongation of submitting his/her contributions to the Social Security Office.



In addition, it is worth noting that according to the Ministerial Regulation Re: Receiving of Compensation in case of Unemployed due to the Effect of Economic Crisis B.E. 2563 (2020), any employee whose employment agreement has been terminated due to its terms or resigns for a cause attributable to the effect of economic crisis during 1 March 2020 to 28 February 2022 will be entitled to compensation at 45% of daily wages for maximum 90 days and at 70% of daily wages for maximum 200 days in case of dismissal.

For more information, please contact:

Chirdpan Napasawat, Partner
chirdpan@lshorizon.com

Chattphol Pongkan, Associate
chattphol@lshorizon.com

Chutikarn Boonmark, Associate
chutikarn@lshorizon.com



THERE IS ALWAYS A SOLUTION

LS Horizon Limited is a regional law firm with offices in Thailand and Lao PDR and associated firms in Singapore, Cambodia and Myanmar, which is capable of delivering international quality legal services.

LS Horizon has more than 50 dedicated attorneys, including foreign attorneys with previous experience at top-tier international law firms and capable of handling landmark transactions in Thailand and other Asian countries to service clients in a wide range of industries with the best legal counsel.

Our current practice areas are

- Mergers and Acquisitions
- Capital Markets
- Corporate Real Estate
- Banking and Finance/Projects
- Private Equity & Foreign Direct Investment
- Dispute Resolution
- Insolvency and Business Reorganization
- Administrative and Constitution Law

Important Note and Disclaimer

The content of this Newsletter is prepared as of 27 April 2020

This Newsletter is informational in nature and is not to be considered as legal advice. It does not exhaustively cover the subjects which it treats, and is only intended to address some of the key issues. When specific questions arise in practice, it is necessary to obtain appropriate legal advice.

LS HORIZON LIMITED
14th Floor, GPF Witthayu Tower A
93/1 Wireless Road, Lumpini
Phatumwan, Bangkok 10330 THAILAND
Tel: (+662) 627 3443
Fax: (+662) 627 3250
E-mail: information@lshorizon.com
www.lshorizon.com

LS HORIZON (LAO) SOLE CO., LTD.
Unit 4/1.1, 4th Floor
Simuong Commercial Center
Fa Ngum Road, Phiavath Village
Sisatanak District, Vientiane
Lao PDR
Tel: (+856-21) 217 762, 217 768
Fax: (+865-21) 217 590

DBLS LAW OFFICE

(in association with LS HORIZON LIMITED)
38, Samdech Pan Ave. (corner of 214 St. & 55 St.)
Sangkat Boeung Rang, Khan Daun Penh, Phnom Penh
The Kingdom of Cambodia
Tel: (+855) 23 211 789
www.dblslaw.com

VALENSEA LAW LLC

(as correspondent law firm of LS HORIZON LIMITED)
10 Anson Road, #20-01 International Plaza
Singapore 079903
Tel : +65 6592 5269
www.valensealaw.com

DECHA & CO (MYANMAR) LIMITED

(in association with LS HORIZON LIMITED)
22 (C), Lane of Kabaraye Pagoda Road,
Ko Min Ko Chin Ward, Bahan Township,
Yangon 11201, Myanmar
Tel. (+95) 94 5523 7324-5
www.dechaco.com



ASIA-PACIFIC 2019

