



MOVEMENT CONTROL ORDER : HOW IT AFFECTS YOU

20 March 2020

INTRODUCTION

On 16th March 2020, Prime Minister Tan Sri Muhyiddin Yassin announced the Government's initiative to curb the Covid-19 pandemic by declaring a 14-day Movement Control in Malaysia from 18.03.2020 to 31.03.2020 ("MCO Period"). This was made pursuant to the Prevention and Control of Infectious Diseases Act 1988 ("PCIDA 1988") and the Police Act 1987 ("PA 1987").

LAWS INVOLVED

1. **The Prevention and Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020 ("the said Order")** was issued pursuant to **section 11(1) of PCIDA 1988**, where the Minister declared all States and Federal Territories in Malaysia to be infected areas.

2. **The Prevention and Control of Infectious Diseases (Measures within The Infected Local Areas) Regulations 2020 ("the said Regulation")** was issued pursuant to **section 11(2) of PCIDA 1988**, where the Minister had prescribed certain measures to control the spread of the infectious diseases.

THE MOVEMENT CONTROL ORDER ("MCO")

1. Prohibition of public or mass gatherings, including for any religious, sports, social and cultural activities.

This is in accordance with Regulation 3 of the said Regulation.

Q: What about attending a funeral?

Regulation 3(3) of the said Regulation provides that:-

A person may gather or be involved in a gathering for purpose of funeral ceremony provided that the number of attendees to such ceremony shall be kept to a minimum.

It should ideally only involve close family members and/or mosque/surau/church/temple etc congregation. However, this is only limited to mandatory funeral rites and does not extend to tahlil prayers or any additional ceremonies or rites for the deceased.

In addition, if it involves the death of a person infected with Covid-19, the burial or funeral of the deceased shall only be done in accordance with the direction from the authorized officer. This is in pursuant to section 17 of PCIDA 1988.

Q: Can we participate in outdoor activities that does not involve mass gatherings, such as jogging, a walk in the park etc?

Although there are no clear prohibitions to participate in those activities, Regulation 3(1) states that: -

Although there are no clear prohibitions to participate in those activities, Regulation 3(1) states that: -

No person shall make any journey from one place to another place within any infected local area except;

- (a) to perform an official duty,
- (b) to make a journey to and from any premises that provide essential services,
- (c) to purchase food supply or daily necessities,
- (d) to seek healthcare or medical services,
- (e) any other special purposes as may be permitted by the Director General.

Therefore, it is highly not recommended to involve in such activities. In the event that there is a necessity to move from one place to another, all the precautions such as social distancing need to be observed.

2. Closure of all education sectors.

This is accordance with Section 31 of PCIDA 1988.

3. Closure of all premises; houses of worships, business premises, government premises and private premises except: (i) those that are categorises under essential services and (ii) those that provides daily necessities.

This is in accordance with **Regulation 5** and the **Schedule of Essential Services** in the said Regulation. The National Security Council further defined the scope of essential services in a press statement dated 18 March 2020. The National Security Council also clarified that certain Non-Essential Services are permitted to continue with conditions.

4. Restriction and requirements on travelling to and from Malaysia where (i) Malaysians citizens are prohibited from travelling out of Malaysia, (ii) Malaysian citizens returning from overseas are required to undergo health screening and must self-quarantine for a period of 14 days and (iii) all foreign visitors are not allowed to enter into Malaysia.

Q: Can we travel to another state in Malaysia during MCO Period?

No. We are not allowed to do so unless for reasons listed under Regulation 3(1) of the said Regulation.

Q: Can non-Malaysian citizens travel out of Malaysia during MCO Period?

Yes, they are allowed to do so. However, they are not allowed to enter back into Malaysia throughout the MCO Period unless the return is to work in any of the essential services.

WHAT DOES THIS MEAN FOR THE EMPLOYERS AND EMPLOYEES?

In Malaysia, the principle act governing employees are found in the Employment Act 1955 ("EA 1955"). The purpose of EA 1955 is to accord protection to employees and set the minimum standards for terms of employment. However, not all employees are covered under EA 1955.

Pursuant to section 2(1) of EA 1955, employees that are governed by the said Act are those:-

- 1) who earn monthly wages RM2,000.00 and below; and
- 2) who, irrespective of their wages, either engaged in manual labour, engaged in the operation or maintenance of mechanically propelled vehicle, supervise or oversee other employees engaged in manual labour, engaged in any capacity on a vessel registered in Malaysia subject to conditions, or domestic servants.

Employees that are not governed by EA 1955 will have to rely on their respective contracts of service.

Q: Can employers require employees to continue working during MCO Period?

Yes, employers are allowed to do so. However, since there is a requirement for all premises to be closed, employers must allow the employees to work from home, except for those listed under the essential services.

Even for those in the essential services which continue to operate during the MCO, the employer ought to comply with the following steps as per the Ministry of Human Resources' Frequently Asked Questions issued on 19.03.2020 ("MHR FAQ"), i.e.:-

- (1) Employer to reduce the number of employees to minimal level or at least 50% from the normal workforce;
- (2) Employer to ensure limited movement of the employees involved;
- (3) Employer to provide thermometer and to take temperature reading of employees every day;
- (4) Employees to ensure compliance with the Prevention of COVID-19 Procedures set by the Ministry of Health from time to time;
- (5) Employer to provide hand sanitizer;
- (6) Employer to carry out disinfection and sanitization process;
- (7) Company to provide guideline on social distancing and ensure compliance to the same.

Q: Could employer deduct employees' salary during the MCO Period.

If employees are still working from home then the salary should not be deducted. Failure to do so would amount to a violation of the employees' right and constitute an unlawful deduction. Section 15 and 24 of EA 1955 could be invoked.

Section 24(1) of EA 1955 provides that no deductions shall be made by an employer from the wages of the employees other than in accordance with the Act. Sections 24(2) – (6) provide the procedures and reasons that allow for lawful deductions of wages such as in cases of overpayment, advance payment of wages, indemnity etc.

The Ministry of Human Resources had previously introduced a guideline stating that employees should still be paid even if they are unable to work due to a quarantine order. The Ministry of Human Resources also clarified in the MHR FAQ that the employees cannot be compelled to utilize their annual leave or to take unpaid leave during the MCO as the MCO was made pursuant to PCIDA 1988.



In the event that employees are unable to work from home, employer shall not deduct the employees' salary as this would amount to a breach of the employment contract regardless of whether the employee is governed by EA 1955 or otherwise. However, if the deduction is the only option and is required due to business downturn, impecuniosity, strain in cash flow etc, then the employer is advised to discuss with the employees regarding this matter.

Q: Can employer compel its employees to take unpaid leave during the MCO Period?

Generally, an employer does not have an automatic option to order or treat their employee's 'inability' to work during this period as unpaid leave. Section 60 of EA 1955 provides for employees' entitlement to annual leave.

Unpaid leave should further be applied only in good faith and when there is no option left prior to the last resort, retrenchment. If an employer compels the employees to take unpaid leave or treat this period as unpaid leave without cogent reasons and/or not in good faith, it could amount to a breach of the employees' rights and contract of service.

Q: Can employer resort to retrenchment?

Retrenchment is usually the last resort for businesses that would not survive without taking this option. Although it is lawful and permissible for an employer to resort to retrenchment, employers should exhaust all means before doing so to avoid unfair and unjust treatment to the employees.

In the case of *Mohd Azhan Ariffin v Ranhill Berhad*, the issue in question was whether the decision of retrenchment made by the company was with or without just cause or excuse. The employer claimed financial constraints and that other measures have all been taken. However, the court found that the employer presented insufficient evidence to show that they were in financial constraints as they were still making profits and was not running at loss among other reasons. Therefore, the court held that the Employer's plea was unconvincing and unjustified.

WHAT DOES THIS MEAN FOR BUSINESSES?

Q: Could businesses and factories that process and manufacture daily necessities (other than food items) continue to operate during the MCO Period?

There are certain manufacturing companies that are allowed to continue to operate during the MCO Period. The National Security Council had list down those industries in a statement released dated 18th March 2020 in Appendix A. However, there are special conditions required from these companies such as providing the National Security Council with the list of workers involved in working in the premises and conducting temperature checks on the workers on a daily basis.

Q: What would happen to the country's agriculture sector such as oil palm and rubber plantations (as this does not fall within the essential services)?

The Minister of Primary Industries had issued a statement dated 19th March 2020 stating that exceptions will be given for these two sectors, where Government will allow certain activities in these sectors to continue to operate. However, all measures of precaution and control of the Covid-19 shall continue to be observed.



FAILURE TO COMPLY?

Section 11(4) and read together with **Section 24 of PCIDA 1988**, provide that: -

Where no specific penalty is provided, any person guilty of an offence under the said Act shall be liable to imprisonment not exceeding two years or to fine or both for a first offence.

The public also has a duty to report of such violations to any nearest police stations.

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