



WORKFORCE RESTRUCTURING

**CAMBODIA • LAO • MYANMAR •
THAILAND • VIETNAM**

TOP TEN QUESTIONS AND ANSWERS

YOUR TOP TEN QUESTIONS ANSWERED

CAMBODIA

1. Is cost cutting due to low sales a valid reason for directing that employees take mandatory leave?

Mandatory leave is not addressed under the Labour Law. Therefore, an employer cannot require its employees to take mandatory leave even on the basis of cost cutting due to low sales. For the employee to be directed to use his or her annual leave, there must be an agreement in place between the employer and employee to this effect.

As an alternative, if cost cutting due to low sales causes the company to suspend its operations, there is an option whereby the company may apply for the suspension of employment contracts. The company must submit a request to the Ministry of Labour and Vocational Training (“MLVT”) for suspension of employment contracts due to economic reasons or any specific difficulty and such a suspension must be monitored by the labour inspector.

2. If employees knowingly leave the country in the expectation that they would probably have to enter quarantine upon their return – does the employer have an obligation to pay these employees during the period of quarantine?

The current laws and regulations do not address this situation and it is therefore subject to the employer’s policy and/or conditions when the employer approves the leave. In the absence of such a policy or conditions, if the employer approves the leave when aware that the employee will have to enter into quarantine upon his or her return, the employer may have an obligation to pay full salary and benefits to such an employees during the self-quarantine period provided that the employee can work remotely on normal working days. If work cannot be performed remotely during the self-quarantine period, then the employer may consider the following:

- The employer may ask the employee to take annual leave (subject to the employee’s consent) for the period of self-quarantine if the employee has available leave balance. In this scenario, the employee is entitled to full salary and benefits; and
- In the event that the employee does not have any available leave, the employer may ask the employee to take voluntary unpaid leave (subject to the employee’s consent). In this scenario, the employer does not have an obligation to pay salary and benefits to the employee during the self-quarantine period. This is in line with the principle of “no work, no pay” under which an employee is not paid unless work is performed and owing to the fact that the employee left the country in the knowledge that he or she would probably be placed in self-quarantine upon return.

The LAO PDR

3. In the event that an organization may need to implement a redundancy plan, does it need to obtain approval thereof from the Ministry of Labor and what will the compensation be like?

No, the Labor Law merely requires the employer to notify the Labor Administration Agency (“LMA”) of the Ministry of Labor and Social Welfare (“MLSW”). However, in practice the LMA may require the employer to furnish information or documents attesting to the legitimacy of the redundancy due to business reasons or information related to calculating the severance payable to the affected employee(s).

The employer is liable to pay severance to the redundant employee calculated at 10% of his/her last salary multiplied by the total number of months worked with the employer.

4. May a reduction of working hours and wages be applied entirely or partially to a company in accordance with the nature of the business and workload?

The Labor Law provides for both:

- An employer may temporarily suspend its operations under the Labor Law and only pay employees 50% of their normal salary. The Labor Law does not elaborate on the circumstances under which such unilateral suspension by the employer may be implemented and whether or not the suspension may apply to the whole or a portion of the employer’s operations. At present, the exercise of this right of suspension has not been properly tested with the authorities.
- An employer could partially reduce working hours and wages of an employee due to business reasons and workload. However, this would require the employee’s consent as any such reduction would constitute an amendment of the terms of employment contractually agreed to by and between the employer and employee.

MYANMAR

5. Are companies required to pay full salaries to their employees who cannot work from home or are not required to be on standby?

The Ministry of Labour, Immigration and Population (“MOLIP”) has not issued any notifications or guidelines on whether the employer must pay 100% salary to its employees who cannot work from home or not required to be on standby. According to unofficial verbal guidance from the MOLIP (on a no-name basis), the employer may negotiate with the employees in regard to salary payment during the business slowdown resulting from the COVID-19 crisis and temporary business closure as per the government’s announcements. Therefore, any salary arrangement would be subject to mutual agreement between the employer and employees and express consent (in writing) of the employees should be sought.

6. The employer cannot provide work due to COVID-19. What should it do?

The employer should consult with the employees on the difficulties experienced during the COVID-19 pandemic and carry out necessary actions such as suspension of employment, redundancy, workforce reduction or closure of the business. In any of these circumstances apart from suspension of employment, the employer must issue relevant notice and severance payment. The employer should also inform the relevant Township Social Security Board within ten days from the date of termination. In the case of suspension, the employer may negotiate with the employees in regard to the payment of salary and other benefits.

THAILAND

7. Is it possible to temporary suspend only part of the business, say 50% of the staff?

Yes, this is possible and recognized by the Thai labor court as a ‘partial’ business suspension. However, to mitigate the risk of claims, the company should ensure that it has a fair process and balanced criteria in place to select the members of staff who are to be furloughed.

It is worth noting that the court ruling under which a ‘partial’ business suspension was recognized was related to partial suspension of the business on the grounds of business necessity under Section 75 of the Labor Protection Act (requiring at least 75% of salary to be paid), and not force majeure. We are unaware of any ruling to-date on whether or not force majeure is applicable and which could apply in the context of COVID-19.

8. If workers are 60 years’ of age or older and forced to retire during the COVID-19 crisis, what are their entitlements to compensation?

The right to retirement upon reaching 60 years’ of age has been in effect since 2017. The retired employee may apply for a pension and will be entitled to severance pay.

Forced retirement is considered to be dismissal and the employee will also be entitled to severance pay in such circumstances.

The level of severance pay will be in accordance with the rates of severance provided under Section 118 of the Labor Protection Act B.E. 2541.

VIETNAM

9. Are there any other forms of reimbursement due from Social Insurance to employees during their required period of quarantine by the Government?

Employees who are (i) required to be quarantined by the Government, (ii) diagnosed with COVID-19 and treated at health facilities, and (iii) eligible for the sick leave benefits stated in the Vietnamese Law on Social Insurance 2014, are entitled to differing levels of applicable reimbursement under the sick leave mechanism.

Employees who are required to be quarantined by the Government but not diagnosed with COVID-19 are not entitled to reimbursements under the sick leave mechanism outlined in the Law on Social Insurance 2014.

10. Can employers deduct employees' annual leave entitlement or direct that unpaid leave be taken during the COVID-19 period?

Employers may request their employees to use their paid annual leave entitlement. Indeed, employers may fix the timetable for annual leave after consulting the opinion of its employees. There is no specific advance notice period for employers to announce the dates or duration of annual leave to be taken by their employees.

For unpaid leave, employers and employees may discuss and agree on unpaid leave in addition to annual paid leave that employees are entitled to under their employment contracts. The decision to avail of unpaid leave and the duration of this are matters to be mutually agreed upon by both parties.

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