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**Legal Update**

**Employment-related matters concerning the Coronavirus outbreak**

The Prime Minister of Vietnam has declared the Coronavirus as a national pandemic, and officially issued an order to put the country under social distancing within 15-day period from 01 April 2020. And on 15 April, the Prime Minister has confirmed further order to extend the social distancing in Hanoi, Ho Chi Minh city and other 10 provinces until 22 April, with open consideration to further extend until 30 April or more, depending on actual situation of the outbreak in Vietnam (the review of which is on the Government agenda next week).

Following the Prime Minister's orders, Vietnamese authorities have implemented multiple measures to control the Coronavirus outbreak in Vietnam, such as travel bans, border closures and quarantine. Significantly, the provincial authorities of the two largest economic hubs in Vietnam (i.e., Hanoi and Ho Chi Minh City) have quickly responded by the issuance of many administrative orders to temporarily shut down a lot of businesses such as education, tourism and entertainment in February, March and April.

Despite the positive outcome to help control the outbreak of Coronavirus in the country, the social distancing and other preventive measures, however, have put the business to face many challenges in employment matters. In this note, we will discuss some frequently asked issues, from Vietnamese labor laws point of view, that employers should take into consideration to respond to this first-time-ever circumstance.

**1. Can employers adjust the employees' salary during work suspension period?**

A number of business sectors are subject to suspension request from the Government, while other businesses are also encouraged to temporarily suspend the operation. In addition, even if employer still operate like normal, work suspension may still be applicable to specific employees, or separate division of the employers in the following cases:

- (i) Employees being expatriates who are barred from entering Vietnam to return to work,
- (ii) Employees who are quarantined under request of competent authority,
- (iii) Suspension request from competent authority due to positive test of the employee working therein, etc.,

Whether employers may adjust/reduce the salary of the employees during work suspension period?

The short answer is: **YES, however**, the salary adjustment is subject to important conditions: (i) employers must obtain consent/agreement from the employees on same, and (ii) the adjusted salary must still be at least equal to, or higher than the mandatory regional minimum wage (NB: regional minimum wage varies, depending on the employee's workplace). Direct/one-on-one consultation with the affected employee is advisable. In case one-on-one consultation is not practically possible, or the employee expressly refuse the salary adjustment proposal, employers need to carefully consider other alternative option.

## **2. Can employers who are not subject to mandatory suspension request still opt to adopt work-from-home arrangement?**

Among other measures, social distancing is a recommendation encouraged by the Government. Therefore, the short answer is **YES, but** it is advisable to obtain the employees' consent on same. Strictly speaking, for employers who sign labor contracts which clearly say the "place of works" is the employer's office, the employees may refuse work-from-home arrangement on the ground that work-from-home is not mandatory following competent authorities' request. Compelling the employees to work from home against their will may give rise to employment dispute.

It is also important for employer to clearly clarify work-from-home arrangement vs. paid annual leave - to make sure that the employees fully understand his/her duties to work from home. Besides, the employer should establish clear internal policy re work-from-home (NB: performance review, labor discipline during work-from-home period may require the employer to consult with the grass-roots trade union or amend the internal labor rule for registration).

## **3. Can employer request or compel the employees to utilize their outstanding leave?**

The short answer is **NO**. Vietnamese laws do not allow the employer to pre-determine or compel the employees to take annual leave. Employer, however, may encourage the employees to (re)schedule their leave plan and take leave while social distancing is still recommended by the Government.

## **4. Can employer assign the employees to other work with lower salary without the employee's consent on same?**

**YES**, in principle, it is practically possible for employers to do so, but only for a short-term period. For those who refuse the salary adjustment or work-from-home proposal, employer may still rely on Article 31 of the Labor Code to temporarily assign them to other works without the employees' consent on same, provided that total period of assignment to other works must not exceed 60 days in a calendar year. For the first 30 days of work assignment period, the employees are still entitled to the same salary, and for the remaining 30 days,

employer may reduce the salary by 15% (provided that that adjusted salary must still be equal to or higher than the minimum regional wage).

**5. Can employer suspend the employees' employment during Coronavirus outbreak?**

**YES, but only if** the employees agree on same (such agreement should be made in writing as an agreement re suspension of employment contract). Without an agreement re suspension of employment contract, it is not possible for employer to unilaterally suspend the employees' employment during Coronavirus outbreak.

**6. Can employer lay off employees due to Coronavirus outbreak?**

Coronavirus outbreak has put the world's economy on impending risk of economic crisis, which causes huge pressure financial distress on the employers to maintain normal operation and workforce. Vietnam laws do recognize Coronavirus outbreak as a circumstance for employers to lay off employees and downsize the business. The short answer for this question is **YES**. Options to lay off the employees include (i) unilateral termination of labor contract or (ii) redundancy. However, applicable regulations for lay off are not crystal clear, and somehow, tricky in practice, as all burden of proof vest on the employers – i.e. employers must prove that they economically suffer from the pandemic, that the laying off is a result from business/production downsizing and they have exhaust necessary remedial measures to deal with such impact etc. Any laying off plan should be carefully planned and examined (may need consultation with trade union and registration with labor authorities, depending on actual lay off plan).

**7. Can employer discipline the employees who refuse to make self-declaration of health status or give false/incorrect self-declaration, or if the employees are confirmed positive with Coronavirus that affect the employer's normal operation?**

There is no quick answer to this question. Strictly speaking, disciplinary sanction must still be made in accordance with the employers' (registered) internal labor rule. Should any circumstance arise, and employers would like to discipline any employees, proper consultation would be required.

*Please note that this legal discussion only provides general view over the subject matters and does not constitute specific legal advice. Should you need any assistance or advice on any specific matter, please feel free to contact us for comprehensive legal analysis.*

**Key contact**

If you have any questions or would like to know how this might affect your business, please contact the key contact.



**Nguyen Hong Hai**

Partner and Head of Employment Practice  
Hanoi, Vietnam  
+84 24 3971 0888  
[hai.nguyen@lexcommvn.com](mailto:hai.nguyen@lexcommvn.com)



**Tran Thi Giang**

Associate  
Hanoi, Vietnam  
+84 2439710888  
[giang.tran@lexcommvn.com](mailto:giang.tran@lexcommvn.com)

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