



Managing Compliance Risks Relating to the COVID-19 Epidemic

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A summary overview of key legal obligations and risk management steps that multinational companies in Korea need to know

1. Latest COVID-19 updates in Korea

- In less than two months after confirming its first case of the novel coronavirus (“COVID-19”), Korea has recorded more than 7,000 new cases and 50 deaths (as of March 9, 2020) and has become one of the worst hit countries outside of China.
- More than half of the 193 UN member states – about 106 countries and territories as of March 9, 2020 – have imposed entry restrictions or quarantine procedures on travelers from Korea over COVID-19 concerns.
- As the number of confirmed cases continues to surge, it has become crucial for multinational companies to understand their obligations under Korean regulations, some of which are undergoing revisions for a more effective response to the outbreak.

2. Key obligations that companies should comply with

- The relevant laws affecting businesses during the COVID-19 are largely two-fold: health and HR laws. Regardless of whether they are foreign entities, companies operating in Korea must comply with the Infectious Disease Control and Prevention Act (the “Disease Control Act”) and the Occupational Safety and Health Act (the “OSHA”).
- **The Disease Control Act**
 - The Korean government plans to provide support to employers for quarantined or hospitalized employees’ paid leave (up to KRW 130,000 (approx. USD 109) per day)¹. Employers receiving the government’s support for paid leave must provide full paid leave to such employees². Employers voluntarily suspending operation (e.g., to take precautionary self-quarantine measures) are required to provide compensation to employees of up to 70% of the employees’ wage. Employers in violation of the foregoing may be subject to imprisonment of up to three years or fines of up to KRW 30 million (approx. USD 25,180).
 - Under the Disease Control Act, employers are prohibited from employing confirmed patients of COVID-19 for work that involves contact with the general public. A violation of this prohibition may result in a fine of up to KRW 3 million (approx. USD 2,518).

¹ The term “employees” throughout this newsletter refers to employees, officers, temporary workers and subcontractors working for an employer.

² The government may also provide support for living expense to employees hospitalized or quarantined as a result of COVID-19, in which case it would not provide support for paid leave.

- Employers managing or operating facilities used by multiple people (e.g., hotels, apartments) must disinfect such places to prevent the spread of the infectious disease. A violation of this may result in a fine of up to KRW 1 million (approx. USD 839).

- **The OSHA**

- Employers are required to take certain measures necessary to prevent health problems, including those caused by infectious diseases like COVID-19 (e.g., requiring employees to see doctors when they exhibit symptoms like fever after being exposed to a high-risk environment). Failure to comply with this obligation may result in imprisonment of up to five years or criminal fines of up to KRW 50 million (approx. USD 41,950) and potential civil liability for damages.
- According to court precedents, employers also have a duty to undertake reasonably practicable measures to protect the health and safety of their employees in the course of the employees' performance of contractual duties.

3. Workplace health and safety measures to implement

- For reasonable protection of the health and safety of employees, employers may consider adopting the following measures to adequately respond to an epidemic like COVID-19 and strengthen compliance.
- **Preventive measures**
 - Designate a chief safety officer responsible for implementing corporate workplace safety policy and tracking the latest updates, including any guidance issued by government agencies.
 - Understand applicable employer obligations under Korean regulations in advance and regularly check for revisions.
 - Prepare or update an internal policy, providing guidelines on personal hygiene, commute to work, internal and client meetings, business trips (e.g., travel bans, self-quarantine measures, limiting nonessential travels), work-from-home (e.g. remote working and other flexible work arrangements), training, and dining with colleagues and clients.
 - Monitor the health conditions of employees and unaccounted absences to determine whether there is a heightened risk of an outbreak.
 - Install hand sanitizer stations, implement daily temperature checks, and increase the frequency of sanitization of the workplace.
 - Develop a plan for securing an adequate supply of hygiene products (e.g., soap, hand sanitizers, thermometers, etc.) and protective gear.
 - Develop a plan for managing mass absences or prolonged travel restrictions, including a plan for maintaining operational continuity for critical functions and services (e.g., splitting teams to minimize risks of business interruption for an extended period upon

confirmation of cases within the business)

- **In case of an outbreak at the workplace**
 - Isolate affected employees.
 - Notify the local public health center regarding the outbreak.
 - Inform other employees and evacuate the affected workplace.
 - Monitor the health conditions of other employees who may have been in contact with the affected employee.
 - Sanitize offices / affected facilities to minimize the risk of the spread.
 - Prohibit the use of disinfected areas for a certain period.
 - Engage a public health official to determine the course of action to be taken with respect to employees who used the soiled areas that were used / visited by an affected employee.

4. Additional consideration: force majeure provisions

- As the situation develops, more companies and/or their contractual counterparties are facing difficulties in fulfilling contractual obligations and uncertainty remains as to whether they may be excused from non-performance based on force majeure provisions.
- Korean courts have dealt with a small number of force majeure cases relating to, for example, shipwrecks and floods, but they have yet to deal with a case involving an infectious disease outbreak. As such, it is difficult to conclude at this stage whether companies would be able to successfully invoke force majeure provisions.
- There may be a possibility that COVID-19 may be the first case recognized by courts as an epidemic justifying the application of a force majeure provision due to the recent developments, including (i) the outbreak has become an international concern as travel restrictions disrupt travel and businesses worldwide; (ii) for the first time in 11 years, the Korean government has raised the level of alert to the highest level; and (iii) more businesses in almost all sectors continue to suspend or reduce operation.
- Although the applicability of a force majeure provision may depend on how the situation plays out and on the specific facts, companies may consider assessing any potential risk thereof by, for example, reviewing the relevant force majeure provisions, retaining as much records as possible in the event of a non-performance, and consider alternative ways to fulfill contractual obligations.

with your contact at Bae, Kim & Lee LLC, or the following authors of this bulletin:

Won Kyu (John) CHOI
T 82.2.3404.0251
E wonkyu.choi@bkl.co.kr

Jun Ki PARK
T 82.2.3404.6512
E junki.park@bkl.co.kr

Min SON
T 82.2.3404.1275
E Min.son@bkl.co.kr