

# CHANDLER MHM

## Newsletter

### **COVID-19 - GENERAL EMPLOYER LIABILITY**

In this article we provide an overview of the broad obligations of employers under criminal and civil law in relation to the Covid-19 outbreak.

The National Communicable Disease Committee (the "NCDC") announced that the COVID-19 virus is a dangerous contagious disease under the Contagious Disease Act B.E. 2558 (2015). As of 1 March 2020, COVID-19 was also listed by the Thai Ministry Public Health as a dangerous contagious disease under Contagious Disease Act B.E. 2558 (2015) (the "CDA").

#### **Criminal Offences**

If there is an outbreak of COVID-19 in a workplace or business facility of an employer, such employer may be ordered by officials to follow orders or measures laid out under Sections 34 and 35 of the CDA. Failure to comply with such orders or measures might result in a criminal offence being committed, which can carry punishments of a term of imprisonment not exceeding one year or a fine not exceeding THB 100,000, or both.

An employer, as an owner of its work place or business facility and as the employer of employees working in such business facility, also has an obligation under Section 31 of the CDA to notify officials if there is any employee infected or reasonably suspected of being infected with COVID-19. Failure to comply with this notice requirement may result in a criminal offence being committed with a punishment consisting of a fine not exceeding THB 20,000 under Section 50 of the CDA.

As there have not been any preventive orders or measures officially announced for the private sector yet, employers should begin to develop internal preventive measures to reduce the risk of employees contracting COVID-19 virus and potential criminal offences.

All offences under the CDA that are only punishable by a fine or by a term of imprisonment not exceeding one year may be settled by the Director General of the Department of Disease Control (the "DDC") or a person appointed by the Director General in accordance with settlement criteria prescribed by the National Communicable Disease Committee (the "Committee"). Payment of the settlement amount is due within thirty (30) days from the settlement date. Upon payment by the accused of the settled amount the case shall be deemed settled under the Criminal Procedure Code.

#### **Civil Liabilities ( Tort)**

Failure to comply with obligations under the CDA not only puts the employer at risk of criminal liability, but also at risk of civil liability under the law of tort. A private sector employer, which has multiple obligations under the CDA, who deliberately or negligently fails to comply with such obligations resulting in damages to a third party may be liable to that third party under the law of tort<sup>1</sup>. The employer could therefore be liable to pay compensation to such third party.

For example, an employer realizes that its employee may be infected with COVID-19 as the employee just travelled back from a country on the government's list of severely infected zones

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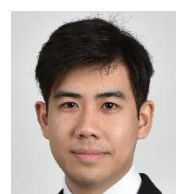
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and has a fever. Instead of prohibiting the employee from coming to work and notifying officials of a potential COVID-19 case, the employer only asks the employee to wear a face mask as a precaution. As time goes by, the infected employee spreads the virus to his/her colleagues and people from other companies in the same building. Ultimately, the whole building is infected resulting in all employees from all companies in that office being quarantined, and ultimately all companies in the building suffering loss due to being unable to operate their businesses. The infected people also suffer permanent lung damage. If that employer is found to have deliberately or negligently failed to notify officials making it impossible for the officials to effectively control the spread of COVID-19 virus, ultimately resulting in the above damage to third parties, the employer may be liable to pay compensation to the injured parties.

### **Employee Absences, and Employer Obligations – Self Quarantine Implications**

Under the current labour laws, if an employee is required to self-quarantine because of contact/exposure to someone with a suspected case of COVID-19 and obligations of the employee become impossible to perform due to a cause not attributable to either employer or employee, the employee is not entitled to receive pay under the principle of “no work no pay”.

However, if failure to perform work by employees is caused by a force majeure event, the employee will be relieved from the obligations to perform work, and he or she is still entitled to receive pay from the employer. As such, it should be noted that the correct measure to deal with labour issues would vary depending on the circumstances and/or applicable rules and/or agreements governing the employment relationship in each case.

We are monitoring this subject closely for updates, and clarification in relation to the special and unique circumstances that have arisen due to the COVID-19 outbreak and will provide updates as we receive them.

If you would like to discuss the issues raised in this article further or related issues, please contact the authors listed in the right hand column.

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<sup>1</sup>Tort is defined generally as an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability.

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