

March 2020

Covid-19 Travel Restrictions & The Refusal of An Employee to Travel for Work

The freedom to travel which many have taken as a certainty in our daily lives have now been curtailed with the Covid-19 pandemic. This has necessitated urgent measures being implemented globally with the most recent being Italy with a lock down. Closer to home Malaysia, has also put in place several measures in efforts to address this situation.

West Malaysia

The Government has with immediate effect restricted the entry of nationals from Italy, Iran, South Korea and foreign nationals regardless of nationality who have been to Italy, Iran, South Korea. Nationals from Hokkaido, Japan and those who were present in Hokkaido, Japan are also prohibited from entering Malaysia. This is a measure which will be in place until such time the Government elects to lift the restriction.

The travel ban will be extended to nationals from Denmark and those who traveling and transiting from Denmark effective 14 March 2020. Malaysians, Permanent Residents and those holding Long Term Social Visit Passes who will be arriving from Denmark will be subjected to a home quarantine of 14 days.

The above restrictions supplement the earlier restrictions imposed on the entry of Chinese citizens from the following cities/provinces in China:

- 1) Wuhan City and Hubei province
- 2) Zhejiang and Jiangsu province
- 3) Province near Hubei (Anhui, Jiangxi, Shaanxi, Sichuan, Henan and Hunan)

All immigration facilities and new work permit applications filed for foreign nationals from Italy, Iran and South Korea have been put on hold until further notice. This is in addition to the earlier restrictions imposed on work permit applications for foreign nationals originating from the above cities/provinces in China and any foreign nationals who were present in the above cities/provinces.

Any foreign national who has secured approval of the work permit application before 30 January 2020 and has successfully entered Malaysia from China (excluding those barred cities/provinces above), nationals from South Korea, Italy, Japan and Iran as well as foreign nationals who were present in South Korea, Italy, Japan and Iran who have arrived in Malaysia prior to the imposition of the travel ban can only submit the passport for endorsement/stamping at the Immigration Department 14 days after the entry date to Malaysia.

Sabah

Subsequent to the earlier ban on all Chinese passport holders from entering the state of Sabah following a circular issued by the Sabah State Secretary via a Temporary (Additional) Prohibition Order, all foreigners and Malaysian citizens, who are non-residents of Sabah and with recent travel history to South Korea, Iran and Italy will also be prohibited from entry into the state of Sabah.

Additionally, all Sabahans, Sabah permanent residents and Sabah residents under employment passes, student passes, long term social visit passes or any exemption order returning from South Korea, Iran and Italy are subjected to a compulsory 14 days home quarantine.

Sarawak

The Sarawak State Disaster Management Committee has announced that all foreigners irrespective of nationalities who have been to China including Hong Kong, Macau and Taiwan, South Korea, Italy and Iran will be refused entry to Sarawak.

In respect of Malaysians who are non-resident of Sarawak who have been to China including Hong Kong, Macau and Taiwan, South Korea, Italy and Iran are strongly advised not to enter Sarawak.

All Sarawakians, Sarawakian permanent residents, Sarawakian residents under a work pass, student pass who have been to China including Hong Kong, Macau and Taiwan, South Korea, Italy and Iran must undergo a compulsory home quarantine of 14 days and will be subjected to random monitoring by the Sarawak Medical Authority.

The Sarawak Health Department has also issued precautionary guidelines at all points of entry to Sarawak to all visitors from countries affected by Covid-19.

With the rapid increase in numbers daily, the situation remains fluid and volatile. Hence all travel should as far as possible be minimised in these challenging times unless critical. Whilst employers have the right to impose travel restrictions in its operations, can the right extend conversely if there is a requirement for the employees to travel?

Right of Refusal Employer vs Employee

Although an employee is obliged to adhere to all lawful orders of an employer, the refusal of an employee to travel may not necessarily amount to insubordination in the light of the pandemic surrounding Covid 19. An employee who is directed to travel to a country which has had a high number of cases of Covid 19 could arguably be within his or her rights to refuse to adhere to the same if there is a threat to his own well being and safety. In these circumstances, it would be a challenge to discipline an employee for insubordination. Conversely in a situation where the employee is required to travel on account of work requirements to a country which has had no incidents of Covid 19 or minimal incidents, if he refuses to do so for fear of his well being and safety this would provide stronger grounds to warrant disciplinary action. Those whose daily functions involve travel for instance cabin crew staff or pilots would be hard pressed to justify the refusal to travel given the specific nature of their job.

Similarly an employer does not have the right to restrict an employee from his or her personal travel as these are rights open to an individual outside the employment sphere particularly where such travel is effected over non working days. If an employee chooses to travel in such times, the employee in turn must be made aware prior to such travel that on return the employee will have to undergo a home quarantine utilising his annual leave for such purposes. The employer may nonetheless choose to exercise the right to deny leave for employees who apply for leave for purposes of travel overseas. Leave is a privilege and benefit accorded to an employee however the right to accept or refuse remains in the hands of the employer.

In addressing such situations employers must remind themselves that it is a delicate balance to be struck between the obligation to provide a safe and healthy work environment against work exigencies. The imposition of such travel requirements must be able to be demonstrated as a necessity to the business operations given the complexities surrounding such travel in present times. Whilst such directives of an employer to its employee were previously cast in stone, the pandemic has brought about a different perspective in the rights of an employer /employee within the employment sphere, many of such issues which remain in untested waters.

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