



As Malaysia was in the process of reopening all activities to revive the country's economy, the country encountered record daily spikes of COVID-19 cases in October 2020. Due to the sudden spike in COVID-19 cases, the government has implemented the Conditional Movement Control Order (“**CMCO**”) in Kuala Lumpur, Putrajaya, Selangor, Labuan and Sabah.

The resurgence of Covid-19 cases has caught the nation's capital off-guard and it will potentially inundate the already teetering economic climate. Most businesses may not be prepared for the abrupt loss of cash flow or the contraction of business so soon due to this CMCO. While this second CMCO, implemented with less stringent movement regulations and only in certain areas of the country, may not have caused the high number of retrenchments as the first wave, but the second round may still pack a sizable economic punch.

An “opportune time” for retrenchment?

Businesses have yet to recover from the financial impact brought by the country's first MCO and they are still struggling to cope with the turbulence. Thousands of small and medium businesses are sitting by the sidelines as they may need to halt parts of their operations again in response to the recently implemented CMCO.

Businesses are most likely losing its financial wherewithal and the employers' hands are tied. Businesses on the brink of collapse may have no option but to release their employees to prevent insolvency. In times like these, the “threshold” and expectation for a responsible retrenchment might be lowered as the impulse to cut cost by businesses is understandable.

Can you fire?

The law recognises that employers have the right and prerogative to manage their workforce, subject to fair labour practices being implemented. Employers should abide by the necessary selection criteria and to let go staff based on objective criteria such as “Last-in, First-Out (LIFO)” and to preserve those with skills to support business sustainability. A company which is genuinely facing financial difficulties due to COVID-19 outbreak has legitimate grounds to reduce its workforce. Employers must exhaust other means, i.e. by reducing working hours, reducing or freezing the hiring of new employees, reducing or limiting overtime prior to retrenching employees. While salary reduction is one of the recommended steps to be taken to avert retrenchment, employees' consent should be obtained

for any salary reduction. A unilateral salary reduction may be viewed as a breach of contract that may potentially give rise to a claim of constructive dismissal.

As responsible employers, companies should help affected employees to look for alternative positions or jobs in associate companies or other companies. Employers should endeavour to meet their obligations in the area of retrenchment benefits due to the employees. Despite the novel COVID-19 situation, it is no less pertinent for employers to observe proper procedures. This is to prevent unnecessary money spent on resolving wrongful dismissal disputes with the employees amidst the worrisome COVID-19 situation.

Employers should not be too quick to trim its workforce as the other side of the coin is that, it may require time and effort to rehire when business picks up again.

Moving forward

To the dismay of all Malaysians, it is certain to see a second wave of retrenchment and job losses if the number of Covid-19 cases continues to escalate. The financial pain during the second wave is certainly going to extend further beyond the food and beverage, aviation, retail and hospitality industries. History has favoured the prepared, being prepared for new lockdowns or outbreaks will be a prerequisite to thrive.

The ultimate wild cards in the job outlook are how many businesses could still remain resilient during the second wave of COVID-19 outbreak and how long it will take for job opportunities to rebound. Some may not even survive the second wave of COVID-19 outbreak, rendering employees rehiring completely impossible. The government will be battling over how to fund or support the unemployed and businesses on the cusp of insolvency. People will find themselves confronting an uncertain future.

“Everything will be okay in the end. If it’s not okay, it’s not the end.” – John Lennon.

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