



Malaysia reported a record high of 2,188 new Covid-19 cases on 24 November 2020, bringing the total number of cases in the country to a whopping 58,847. As Malaysians observe the constant escalating number of Covid-19 cases, the likelihood of employees being exposed to Covid-19 virus will also increase.

Employers will need to spend a fortune in dealing with Covid-19 cases detected in workplaces, having to professionally sanitize and disinfect. Remaining employees in the office will need to be relocated or to be asked to work from home temporarily to allow the areas to be treated. It is inevitable that businesses may need to be shut down temporarily, even for one Covid-19 case detected. Employers will need to immediately notify employees of the confirmed case and all close contacts will need to be sent home for a 14-day self-quarantine. The office workflow will be disrupted severely and customers or clients will be fearful to return.

#### **Employee's refusal to obey an employer's instruction to stay home**

Employees are constantly reminded and encouraged to stay away from crowded areas to prevent contraction of the Covid-19 virus. Would employees who contract the virus risk being disciplined for insubordination for not staying at home as per the employer's instruction? Could they be punished for causing the disruption of workflow and shut down of workplace?

Article 9 of the Federal Constitution provides for freedom of movement. Emotional connectivity remains a core part of being human and employees will need to leave home, at the very least, for grocery and basic daily necessities. Strictly speaking, an employer has no right to restrict movement of his employees just to prevent the risk of infection. It is also unreasonable for employer to punish an employee for the contraction of Covid-19 virus due to the employee's refusal to stay home. However, if an employee contracts the virus due to his infringement of any movement restriction imposed by the Government, the employee may then be subjected to appropriate disciplinary action for conduct detrimental to the workplace.

#### **Medically board out an employee**

Employees who are tested positive for Covid-19 will be excluded from work and be hospitalized to obtain necessary treatment, which may last more than one to two months for patients with severe Covid-19 condition. Can employees be terminated for not being able to perform his or her duty under the employment contract during Covid-19 hospitalization or treatment?



In Malaysia, employers can only terminate an employee on medical grounds when illness or disability impeded the employee's ability to perform his or her duties. "Medical board out" means the termination of employment on the ground that the employee has no or slight prospect of recovering from his or her illness or injury. In essence, an employee can only be terminated on medical ground (be it Covid-19 or otherwise) when he or she experiences disability which would affect his or her ability to work.

Although it's too early to confirm what lasting disabilities COVID-19 survivors will face, many will likely deal with lingering effects of the virus including permanent lung injury and heart problems. An employer may decide to terminate the employment of an employee who is diagnosed with Covid-19 only if the contraction of virus leads to permanent disability which hampers the employee's ability to work.

While an employee may not be terminated for inability to perform his or her task during Covid-19 treatment, he may be requested (subject to his or her agreement) to utilise his paid annual leave for prolonged Covid-19 treatments and follow-up appointments when medical leaves are exhausted. Once paid leaves are utilised completely, he may even be put on unpaid leave for any subsequent medical treatments.

### **Moving forward**

A second wave of Covid-19 infections could collapse our economy completely. The health of employees and financial situation of businesses are intrinsically intertwined. The health and well-being of our nation's workforce are paramount to sail through this economic turbulence. Businesses should focus on ongoing prevention and action plans in response to the changing environment. All sensible measures to control risk of Covid-19 in the workplace must be adopted.

Employees too play a significant role in protecting their colleagues and prevent the contamination and spread of virus in the workplace. Employees should be wary and stay away from crowded places to minimise the risk of exposure to Covid-19 virus, "kita jaga kita".

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