

## **What are an Employer's Health and Safety Obligations in Relation to its Staff?**

Employers have a legal obligation to ensure the safety and health of their employees. Employers should expect those obligations to include implementation of reasonably necessary measures to prevent their employees from being infected by COVID-19. An employer that fails to satisfy its obligation may potentially be liable to its employees for damages arising out of such failure.

## **Should Employers Place Restrictions on Work-Related International Travel?**

Yes. Employers should place restrictions on work-related international travel to high infection risk countries to ensure the safety and health of their employees. In addition, on March 25, 2020, the Ministry of Foreign Affairs of Japan (MOFA) made an announcement requesting people to refrain from unnecessary or non-urgent international travel. Employers should also place appropriate restrictions on any unnecessary or non-urgent work-related international travel.

## **In What Circumstances are Employees Required to Self-Isolate?**

There are no generally applicable requirements for self-isolation under the Japanese law; however, under certain circumstances, employers should order suspension of work for its employees in order to ensure the safety and health of their employees; people are "requested" to self-isolate by a prefectural governor; and people entering Japan from certain countries are requested to self-isolate for 14 days.

### **Employer's Obligation to Order Suspension of Work**

Employers have a legal obligation to ensure the safety and health of their employees and, therefore, are obligated to order the suspension of work to infected employees with COVID-19. Pursuant to the order, employees infected with COVID-19 are required to self-isolate.

### **Prefectural Governor's Request to Self-isolate**

As the situation is changing quickly, employers should actively monitor the latest announcements issued by the Japanese national government, the Tokyo Metropolitan Government, and other prefectural governments. On February 1, 2020, COVID-19 was classified as a "designated infectious disease" under Japan's Infectious Disease Act, permitting prefectural governors to request that infected employees refrain from working and seek treatment at a hospital.

## **Prohibition and 14-Days Self-isolation of People Entering Japan**

In addition, the Ministry of Health, Labor and Welfare of Japan has announced that people, whether Japanese or foreign, entering Japan from overseas, including the US, Europe, China and South Korea, are requested to self-isolate for 14 days at a place designated by the government, such as at home or at a hotel.

On March 30, 2020, the Ministry of Foreign Affairs of Japan announced that foreign people from the US, China, South Korea and most EU countries (including UK) will be prohibited from entering Japan, and people will be requested to refrain from visiting these countries.

## **Do Employers Have to Pay an Employee if They Self-Isolate?**

Under Japan's Labor Standards Act, workers who are forced to "take leave" for "reasons attributable to employers" are entitled to receive compensation of 60% or more of their applicable average wage during the leave period. However, because COVID-19 has been classified by the Japanese national government as a "designated infectious disease," an employee infected with COVID-19 that self-isolates is unlikely to be considered to be taking leave as a "reason attributable to employer" and, thus, infected self-isolating employees are unlikely to be entitled to receive such compensation.

To the contrary, employees may still be entitled to receive their wage if their self-isolation is due to an employer's failure to satisfy its obligation to ensure the safety and health of its employees.

## **How Should Employers Deal With Members of Staff Who Refuse to Come to Work Because They are Concerned About the Risk of Infection?**

### **When Employers Are in Compliance With Their Legal Obligation to Ensure the Safety and Health of Their Employees**

If an employee refuses to come to work but has available paid leave and takes such paid leave, the employee may be paid until such paid leave is exhausted. If the employee has exhausted paid leave or fails to follow necessary procedures to take paid leave, the employer may order the employee to come to work.

However, in light of overcrowded trains during rush hour in major cities in Japan, which may significantly increase an employee's exposure to and risk of infection with COVID-19, employers are encouraged to implement a policy of work from home and/or off-peak commuting. Please note that in order to implement such a policy, employers may need to amend the work rules related to the place of work, starting time of work, ending time of work, and other relevant provisions.

### **When Employers Are in Violation of the Legal Obligation to Ensure the Safety And Health of Their Employees**

The employer may not order the employee to come to work until the employer restores the safety of the workplace.

As separately mentioned above, an employee may still be entitled to receive wages if its employer fails to ensure the safety and health of its employees.

### **If Staff Say They Want to Wear Facemasks at Work, Are Employers Entitled to Say No?**

Employers are not entitled to say no. Rather, employers are encouraged to facilitate their employees to use facemasks at work under their obligation to ensure the safety and health of their employees.

### **What Should Employers Do if a Member of Staff is Confirmed as Having the Virus and has Recently Been in the Workplace?**

Employers must prohibit infected employees from coming to work in order to ensure the safety and health of their employees other than such infected employees.

If an infected employee has recently been in the workplace, an employer is also required to take necessary measures, such as sterilization of the workplace, to prevent other employees from being infected with COVID-19.

### **If the Situation Worsens and Employers are Considering Closing One of Their Sites, do Employers Have a Right to Lay Off Staff in These Circumstances? Are Employers Obligated to Continue to Pay Staff?**

Japanese courts have long held that layoffs are allowed if all of the following four conditions are met:

- The layoff was necessary
- The employer took measures to prevent layoffs, such as reallocation of employees and offer of voluntary leave options
- The employees to be laid-off were reasonably selected
- The employer took proper steps for the layoff, including provision of sufficient information regarding the necessity of the layoff and the detailed plan of the layoff and good faith negotiation with the relevant labor union or its employees

When the situation worsens because of COVID-19, then the closure of one of the employer's sites would likely satisfy the first condition, if the employer can establish the necessity of the layoffs based on evidence, such as, for example, poor financial results in the employer's audited accounting statements. However, the other three conditions must also be met. Unless each of the four conditions is satisfied, the layoffs would be found invalid, and the employer would need to continue to pay its employees.

### **What Other Steps are Employers Taking to Respond to the Challenging Economic Situation Caused by the Virus?**

Some of the potential measures that employers may consider are:

- Imposing bans on travel and other expenses
- Negotiating changes of the employment conditions (e.g., reducing working hours and job sharing) with each employee
- Freezing hiring
- Offering voluntary paid leave options to employees
- Offering to sell the company's business/assets to a third party

### **Can we Adjust the Employee's Compensation in Light of Covid-19?**

Japan's Labor Contracts Act prohibits any change in employment conditions, including employees' compensation, in a manner disadvantageous to employees unless: (a) the employees consent to the change; or (b) the change is reasonable in light of certain factors, including the extent of the disadvantage to be imposed on the employees, the need for changing the employment conditions, the appropriateness of the employment conditions after the change and the status of negotiations with the relevant labor union or employees.

The circumstances caused by COVID-19 would likely be an important factor to be taken into account in (b) above. However, the mere fact that the economic situation has worsened due to COVID-19 is unlikely to be sufficient to justify changing employees' compensation.

#### **Key Websites/Sources of Guidance**

COVID-19-related information released by the Japanese government is available at the following websites, among many others:

[The Ministry of Health, Labor and Welfare of Japan](#) (Japanese language)

[The Ministry of Foreign Affairs of Japan](#) (Japanese language)

[The National Institute of Infectious Diseases, Japan](#) (Japanese language)