

## **COVID-19: Client Update (Special Issue 3)**

### **HR Related Issues and COVID-19**

*31 March 2020*

For many Employers, human resource (“HR”) related issues are one of the more troubling aspects of COVID-19 due to the slew of regulations restricting and minimising human movement, as well as their consequential effect on workflow. This article discusses some of the key issues that have arisen.

#### ***KEEP YOURSELF UPDATED.***

It is important to keep up to date: the COVID-19 situation changes rapidly, and, as can be seen from the past few weeks, new regulations may be announced which takes effect in (what is normally) an extremely short span of time.

While we have strived to highlight the key issues based on the latest announcements, government policies may be changed to react to current exigencies.

We set out below some of the links that Employers may wish to keep an eye on:

1. The Ministry of Health: <https://www.moh.gov.sg/covid-19>
2. The Ministry of Manpower: <https://www.mom.gov.sg/>
3. The Building and Construction Authority: <https://www1.bca.gov.sg/COVID-19>
4. Gov.sg: <https://www.gov.sg/features/covid-19>

## QUARANTINE ORDERS (“QO”), STAY-HOME NOTICES (“SHN”), AND LEAVE OF ABSENCE (“LOA”).

So, what are the differences between Quarantine Orders, Stay-Home Notices and Leave of Absence? We set out a simple table comparing them below:

S/No.	Description	QO	SHN	LOA
1.	What is the governing statute / legislation?	Section 15(1) of the <i>Infectious Diseases Act</i> .	Regulation 3(1) of the <i>Infectious Diseases (COVID-19 — Stay Orders) Regulations 2020</i> .	Section 21A of the <i>Infectious Diseases Act</i> .
2.	What is the basis for issuing the QO / SHN / LOA?	<p>Person is suspected to be a carrier of a COVID-19, or a contact of a person confirmed to have COVID-19.<sup>1</sup></p> <p>Please note that Singapore Residents and Long-Term Pass Holders who have travelled in the past 14 days to Hubei province (mainland China) will be subject to a 14-day quarantine.<sup>2</sup></p>	<p>From 23 March 2020, 2359h: SHN given to Singapore Citizens, Permanent Residents and Long Term Pass holders entering Singapore.<sup>3</sup></p> <p>Before 23 March 2020, 2359: SHN previously also given to short term visitors entering Singapore.<sup>4</sup></p>	<p>Person is a resident / long-term pass holder / worker who has returned from Mainland China (other than Hubei Province).<sup>5</sup></p> <p>After 18 February 2020, such persons are required to serve a SHN instead.<sup>6</sup></p> <p>For more information, you may wish to refer to, e.g., the MOM infographic for</p>

<sup>1</sup> See section 15(1) of the *Infectious Diseases Act*.

<sup>2</sup> Based on <https://www.moh.gov.sg/covid-19/faqs> accessed at 27 March 2020, 5:35pm.

<sup>3</sup> <https://www.gov.sg/article/covid-19-travel-restrictions-for-foreign-visitors-entering-singapore>.

<sup>4</sup> With effect from 11.59pm on Monday, 23 March 2020, all short-term visitors are no longer allowed to enter or transit through Singapore. See The Straits Times, 'Coronavirus: All short-term visitors barred from entering or transiting in Singapore from Monday, 11.59pm' (22 March 2020), <https://www.straitstimes.com/singapore/health/coronavirus-all-short-term-visitors-barred-from-entering-and-transiting-in>.

<sup>5</sup> Persons arriving from Hubei Province would be issued QOs instead. See Ministry of Health, 'Health Advisory for Persons Placed on Leave of Absence' (1 February 2020), at <https://www.moh.gov.sg/docs/librariesprovider5/default-document-library/moh-health-advisory-for-persons-placed-on-leave-of-absence---01-feb-2020-1850h.pdf>.

<sup>6</sup> Ministry of Manpower, "Advisory for employers and employees travelling to and from affected areas in response to increase in cases of COVID-19" (updated as of 23 March 2020), at <https://www.mom.gov.sg/covid-19/advisory-for-employers-and-employees-travelling-to-and-from-affected-areas>.

S/No.	Description	QO	SHN	LOA
				Employers with workers affected by LOA or SHN. <sup>7</sup>
3.	<b>Effect</b>	Person <i>must</i> remain in his/her place of residence for the duration stipulated in the QO, and is to be isolated from and cannot physically interact with other persons. <sup>8</sup>	Person <i>must</i> remain in his/her place of residence for the duration stipulated in the SHN. <sup>9</sup>  No need to be isolated from others.	Person is <i>advised</i> to remain in his/her place of residence for the duration stipulated in the LOA. <sup>10</sup>
4.	<b>How long does it last?</b>	As determined by the Director of Medical Services. <sup>11</sup>	14 days	14 days.
5.	<b>Can I leave my quarantine facility / house if I am serving the relevant order?</b>	No. Breach of a QO is an offence under sections 15(4) or 15(5) IDA.	No. Breach of a SHN is an offence under Regulation 4(1) of the Infectious Diseases (COVID-19 — Stay Orders) Regulations 2020.	Yes, you may leave your residence for daily necessities or to attend important matters, but must minimise time spent in public spaces and contact with others. <sup>12</sup>
6.	<b>What are the potential penalties for breach?</b>	First offence: fine of up to S\$10,000 and/or imprisonment for up to 6 months.  Subsequent	Fine of up to S\$10,000 and/or imprisonment for up to 6 months. <sup>14</sup>  Revocation of work pass under section	Revocation of work pass under section 7(4) Employment of the Foreign Manpower Act. <sup>16</sup>

<sup>7</sup> Accessible at <https://www.mom.gov.sg/-/media/mom/documents/covid-19/posters/infographic-affected-by-loa-shn.png?la=en&hash=2B01EEE02D1C4EF76A9959BE5FDC6FE1>

<sup>8</sup> <https://www.gov.sg/article/everything-you-need-to-know-about-quarantine-orders>.

<sup>9</sup> <https://www.gov.sg/article/everything-you-need-to-know-about-the-stay-home-notice>.

<sup>10</sup> <https://www.gov.sg/article/whats-the-difference-between-a-leave-of-absence-and-a-quarantine-order>.

<sup>11</sup> Section 15(2), *Infectious Diseases Act*.

<sup>12</sup> See Ministry of Health, 'FAQs on the COVID-19 Situation' (last updated 24 March 2020), at <https://www.moh.gov.sg/covid-19/faqs>.

S/No.	Description	QO	SHN	LOA
		offence: fine of up to S\$20,000 and/or imprisonment for up to 12 months. <sup>13</sup>	7(4) Employment of the Foreign Manpower Act. <sup>15</sup>	

## **QO, SHN, LOA AND LEAVE ISSUES**

So, what happens if an Employee is serving a QO, SHN or LOA, and the duration of the QO, SHN or LOA exceeds the number of days of paid leave left for the Employee?

We have also set out some of the more common questions that may be asked below. For more details, please refer to websites such as that of the Ministry of Manpower.<sup>17</sup>

We also note that the Ministry of Manpower has urged Employers to voluntarily impose LOAs on Employees returning from overseas between 14 March and 20 March 2020. This is even though such Employees are not subject to the mandatory SHN imposed by the MOH on persons who arrive from overseas after 11.59pm on 23 March 2020.<sup>18</sup>

## **Can hospitalisation leave be used to cover the QO period?**

An Employee is entitled to utilise medical leave under a Quarantine Order. For Employees who do not have sufficient medical leave to cover the QO period, the Ministry of Manpower has urged Employers to grant additional paid hospitalisation leave to such Employees.<sup>19</sup> There is presently no law requiring an employer grant additional medical leave.

<sup>14</sup> Regulation 4(2) of the Infectious Diseases (COVID-19 — Stay Orders) Regulations 2020.

<sup>16</sup> Ministry of Manpower, '89 Work Passes Revoked for Breach of Entry Approval and Stay-Home Notice Requirements' (21 March 2020), at <https://www.mom.gov.sg/newsroom/press-releases/2020/0321-89-work-passes-revoked-for-breach-of-entry-approval-and-stay-home-notice-requirements>).

<sup>13</sup> Section 65, *Infectious Diseases Act*, which applies to offences under the *Infectious Diseases Act* for which no penalty is expressly provided.

<sup>15</sup> <https://www.gov.sg/article/everything-you-need-to-know-about-the-stay-home-notice>

<sup>17</sup> <https://www.mom.gov.sg/covid-19/frequently-asked-questions>.

<sup>18</sup> The Straits Times, 'MOM urges firms to impose leave of absence on employees who returned from overseas between March 14 and 20' (20 March 2020).

<sup>19</sup> <https://www.mom.gov.sg/covid-19/frequently-asked-questions>.

## **Can annual leave or medical leave be used to cover the LOA/SHN period?**

This is one of the FAQs dealt with by the Ministry of Manpower.<sup>20</sup> In short, the approach suggested by the Ministry of Manpower is this:

1. A LOA/SHN does not mean that the Employee cannot work remotely from home. If the Employee is working remotely from home, then the Employee would not be regarded as being on leave.
2. If the Employee cannot work from home, then the Employer may consider:
  - a. providing additional paid leave; or
  - b. treating the period as hospitalisation leave.

This will entitle the Employer to apply for assistance under the LOA/SHN Support Programme, and foreign worker levy waiver for the LOA/SHN period.

3. If not, the Employer may wish to:
  - a. treat the LOA/SHN as paid hospitalisation leave / paid outpatient sick leave;
  - b. ask the Employee to take his annual leave;
  - c. ask the Employee to take advanced paid leave or no pay leave (for employees who have used up their leave entitlement), or
  - d. reach some other mutually agreeable arrangement with the Employee.

In other words, if, e.g., the Employee has already used up his paid leave entitlement, Employers are not required to issue further paid leave for the Employee during the LOA/SHN period, nor are Employers required to treat the LOA/SHN period as the Employee being on paid medical leave.

So, what happens if the Employee has no more annual leave entitlement to cover the LOA/SHN period, and the Employer does not grant him leave?

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<sup>20</sup> See the footnote above for the link.

If the Employee's contract of service with the Employer is governed by the *Employment Act*,<sup>21</sup> it is unlikely that the Employee will be deemed to have broken his contract of service with the Employer.

This is because his absence due to him being on a LOA or complying with a SHN is likely to be considered a "reasonable excuse" for being absent from work.<sup>22</sup> In such a case, the Employer would be entitled to terminate the contract of service only if the Employee was absent from work for more than 2 days continuously without prior leave from the Employer **and** did not at least attempt to inform the Employer of the excuse for his absence.<sup>23</sup>

However, under the *Employment Act*, the Employer would be entitled to make deductions from the Employee's salary for the Employee's absence from work.<sup>24</sup>

If the Employee's contract of service with the Employer is not governed by the *Employment Act*, whether the Employee has broken his contract of service would depend on the terms of the contract itself.

### **Does WICA cover COVID-19?**

According to the Ministry of Manpower, WICA covers Employees who contract COVID-19 only if it arises from and in the course of work.<sup>25</sup> To illustrate, this means that:

1. The Employee will not be covered by WICA if he contracted COVID-19 while overseas on a vacation.
2. The Employee contracted COVID-19 while travelling to work. WICA will cover the Employee.

Employers will recognize that just from the above two illustrations, there can be difficult issues of proving how the Employee had contracted COVID-19 if the *source* is untraced.

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<sup>21</sup> The Employment Act applies to all persons who have entered into or works under a contract of service with an employer, except for seafarers, domestic workers as well as civil servants and statutory board employees: see section 2, *Employment Act*.

<sup>22</sup> See section 13(2)(a), *Employment Act*.

<sup>23</sup> See section 13(2)(b), *Employment Act*.

<sup>24</sup> See section 27(1)(a), *Employment Act*.

<sup>25</sup> Based on <https://www.mom.gov.sg/covid-19/frequently-asked-questions> accessed on 27 March 2020, 6:00pm

## **What happens if my employee is issued with a 5-day sick leave, but does not have COVID-19 and has exhausted his outpatient leave entitlement?**

According to the Ministry of Manpower, Employers can treat this as outpatient sick leave as part of the employee's paid hospitalisation leave entitlement.<sup>26</sup>

### **Travel advisory**

We also highlight that this issue of whether WICA covers COVID-19 is separate and distinct from the issue of payment for inpatient stay at public hospitals.

As made clear by the Government, any Singapore resident or Long Term Pass holder who disregards the prevailing travel advisories and leaves Singapore from 27 March 2020 onwards will be charged at unsubsidised rates for their inpatient stay at public hospitals and Singapore residents will not be able to claim from MediShield Life or Integrated Shield Plans for treatments should they be admitted for suspected COVID-19 and suffer from the onset of symptoms within 14 days of returning to Singapore.<sup>27</sup>

As an Employer is required by law to provide its Employees holding work permits or employment passes with medical insurance, the Employer may have to make an insurance claim to cover the Employee's medical fees for inpatient stay at a public hospital if the Employee leaves Singapore from 27 March 2020 onwards. Further there is an issue of adequacy of insurance coverage.

As such, Employers must consider implementing travel policies relating to overseas travel during this period. If an Employee breaches the Employer's travel policy, the Employer may conduct an inquiry into the Employee's possible misconduct and dismiss the Employee from his employment with the Employer on the basis of misconduct.<sup>28</sup>

### ***BRINGING IN FOREIGN WORKERS***

Singapore has announced on 22 March 2020 that from 23 March 2020, 2359hrs that only work pass holders (including their dependants) involved in providing essential services will

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<sup>26</sup> Based on <https://www.mom.gov.sg/covid-19/frequently-asked-questions> accessed on 27 March 2020, 6:00pm.

<sup>27</sup> The Straits Times, 'Singapore residents who continue to travel abroad will pay full hospital charges if warded for coronavirus' (24 March 2020), <https://www.straitstimes.com/singapore/singapore-residents-who-continue-to-travel-will-pay-full-hospital-charges-if-warded-for>.

<sup>28</sup> See section 14(1), *Employment Act*.

be allowed to enter and transit through Singapore, though they will be subject to a 14-day SHN. Malaysians with Singapore work permits can continue to work in Singapore during this period, with appropriate accommodation arrangements.<sup>29</sup>

Therefore, it may be difficult for any company to bring in foreign workers into Singapore during this period. The Ministry of Manpower has "*strongly urged*" all employers to defer bringing pass holders into Singapore.<sup>30</sup>

For Employers who do wish to bring in foreign workers, please note that:

1. As of 23 March 2020, foreign workers from mainland China will not be issued new work passes, although existing work pass holders from mainland China will not be affected.<sup>31</sup>
2. For foreign workers arriving in Singapore after 11.59pm on 25 March 2020, the Ministry of Manpower has stated<sup>32</sup> that Employers must:
  - a. Submit an entry approval request<sup>33</sup> for the foreign worker to enter Singapore;
  - b. Secure a suitable place of residence for the foreign worker to serve his 14-day Stay-Home Notice, which includes obtaining the landlord's consent where applicable;<sup>34</sup>
  - c. Arrange for the foreign worker to be sent directly from the place of disembarkation to the place of residence;

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<sup>29</sup> This is based on <https://www.moh.gov.sg/news-highlights/details/additional-border-control-measures-to-reduce-further-importation-of-covid-19-cases>.

<sup>30</sup> Ministry of Manpower, "*Advisory for employers and employees travelling to and from affected areas in response to increase in cases of COVID-19*" (updated as of 23 March 2020), at <https://www.mom.gov.sg/covid-19/advisory-for-employers-and-employees-travelling-to-and-from-affected-areas>.

<sup>31</sup> <https://www.mom.gov.sg/covid-19/advisory-for-employers-and-employees-travelling-to-and-from-affected-areas>.

<sup>32</sup> See Ministry of Manpower Advisory on COVID-19, '*Additional responsibilities to bring pass holders (work pass holders and their dependants) into Singapore*' (updated as of 25 March 2020) at <https://www.mom.gov.sg/covid-19/additional-responsibilities#employers-responsibilities>.

<sup>33</sup> Entry approval request form can be found at <https://form.gov.sg/#!/5e3cbabee41f590012014e91>.

<sup>34</sup> This does not apply to foreign workers who transited at or travelled from the United Kingdom or the United States: such foreign workers are required to serve their 14-day SHN at designated facilities.



- d. Ensure that the foreign worker is contactable by the Ministry of Manpower through mobile phone; and
  - e. Provide the foreign worker with food and other daily essentials during the 14-day period.
3. In particular, we highlight that on 25 March 2020, the Ministry of Manpower has announced that (with immediate effect) all new and existing workpass holders (including dependants) who enter Singapore from Malaysia need to obtain the Ministry's approval before they commence on their journey, and they will be subject to a mandatory 14-day Stay-Home Notice upon arrival in Singapore. Employers need to take note of the requirements, as well as the limited exemptions for Malaysians and workpass holders conveying essential services or supplies.<sup>35</sup>

Construction companies should note the 22 March 2020 advisory from the Ministry of Manpower and the Building and Construction Authority<sup>36</sup> to retain local workers and to retain existing foreign workers already in Singapore.

The advisory has set out various possible means that construction companies may wish to explore as alternatives to bringing in foreign workers from overseas.

### **What happens to my MYE?**

As of 24 March 2020, the Ministry of Manpower has announced that it is working with the Building and Construction Authority as well as the Singapore Contractors Association Limited on a temporary scheme to refund unutilised MYE: see the announcement at <https://www.mom.gov.sg/newsroom/press-releases/2020/0324-further-measures-to-help-companies-cope-with-covid-19-situation>.

Construction companies should keep a close eye out as the announcement states that this relief measure will be available for 6 months from 1 April 2020, and hence we expect that the details will be forthcoming.

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<sup>35</sup> See the Ministry of Manpower Advisory on COVID-19, 'MOM Entry Approval and Stay-Home Notice Requirements for Work Pass Holders from Malaysia' (25 March 2020), at <https://www.mom.gov.sg/newsroom/press-releases/2020/0325-mom-entry-approval-and-stay-home-notice-requirements-for-work-pass-holders-from-malaysia>.

<sup>36</sup> Accessible at <https://www.mom.gov.sg/newsroom/press-releases/2020/0324-further-measures-to-help-companies-cope-with-covid-19-situation>

### ***MEASURES TO TAKE AT WORKPLACE***

Employers should also implement measures at the workplace to not only limit the spread of COVID-19, but also with a view to minimising any disruptions that may be caused. These measures include, but are not limited to:<sup>37</sup>

1. Setting up business contingency plans;
2. Allowing Employees to work remotely from home (where possible);
3. Stagger the working hours for Employees;
4. Implement robust sickness surveillance measures at the workplace, including twice-daily temperature taking and recording;
5. Ensure that workstations for Employees are spaced out at least more than 1m apart;  
and
6. Setting up disinfection of common areas.

The Ministry of Manpower has announced on 23 March 2020 that it has commenced enforcement operations starting on 23 March 2020 to review workplaces' compliance with the various Government advisories on safe distancing measures, and has issued 13 Stop-Work Orders and 8 Remedial Orders on just that first day.<sup>38</sup>

We also highlight that the Ministry of Manpower has updated its advisory on safe distancing measures at the workplace on 26 March 2020 (see <https://www.mom.gov.sg/covid-19/advisory-on-safe-distancing-measures>). We strongly urge Employers to read and implement the measures as recommended.

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<sup>37</sup> We suggest Employers read through the measures set out at <https://www.gov.sg/article/safe-distancing---what-measures-can-you-take-at-the-workplace>; the Ministry of Health's 20 March 2020 announcement at <https://www.moh.gov.sg/news-highlights/details/stricter-safe-distancing-measures-to-prevent-further-spread-of-covid-19-cases>; and the Ministry of Health's 24 March 2020 announcement at <https://www.moh.gov.sg/news-highlights/details/tighter-measures-to-minimise-further-spread-of-covid-19>

<sup>38</sup> <https://www.mom.gov.sg/newsroom/press-releases/2020/0323-mom-mounts-enforcement-operation-to-ensure-workplaces-comply-with-safe-distancing-measures>

## **Working remotely**

Working remotely raises cyber security issues. Consider the following:

1. The Employee's laptop has an updated anti-malware and anti-virus programme;
2. The Employee's accounts are password protected with a strong password;
3. The Employee is not using a public internet network, and is using a personal home network (and preferably one secured by a strong password); and
4. For sensitive transactions, Employers may wish to purchase and ensure that the Employee uses corporate VPN access.

Employers may wish to consult, e.g., <https://www.csa.gov.sg/gosafeonline>, where there are various resources available on how companies and individuals can practice good cyber security. In addition, the Singapore Computer Emergency Response Team ("SingCERT") has issued an advisory on tips for staying cyber-safe while telecommuting, which can be found at <https://www.csa.gov.sg/singcert/advisories/ad-2020-001>.

In this regard, SingCERT has stated that there are instances of cyber criminals using COVID-19 to conduct malicious cyber activities, including reports of an Emotet malspam campaign in Japan. As such, SingCERT has recommended that users should not click on suspicious links or open suspicious emails or messages.<sup>39</sup>

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<sup>39</sup> Based on <https://www.csa.gov.sg/singcert/alerts/malicious-cyber-activities-leveraging-wuhan-coronavirus-situation> accessed on 27 March 2020, 6:10pm.

**Contact us.** We have counselled clients on similar issues. If you need specific advice, please contact:

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