

NEWSLETTER

Beginning 01 June 2020, the entire Metro Manila was placed on General Community Quarantine ("GCQ"). This means more businesses and establishments have been allowed to resume operations, albeit at a limited operating capacity and with a guarantee that the minimum public health standards shall be complied with at all times for the duration of the GCQ.

In light of this development, we have listed hereunder the common questions regarding the rights and responsibilities of employers, as well as the effects of the MECQ on rental payments and tax filings and obligations.

EMPLOYER'S RIGHTS AND RESPONSIBILITIES

Q: Are employers required to conduct mandatory testing of employees prior to requiring them to report to work?

A: NO. There is no requirement for testing prior to requiring employees to report to work. (Department of Trade and Industry and Department of Labor and Employment Guidelines on Workplace Prevention and Control of COVID-19 issued on 01 May 2020 [the "DTI and DOLE Interim Guidelines"])

Q: Who shall bear the cost of prevention and control measures for the workplace?

A: The employer shall shoulder the cost of COVID-19 prevention and control measures, such as, but not limited to, the following: testing, disinfection facilities, hand sanitizers, personal protective equipment, signages, proper orientation and training of workers, including all materials for COVID-19 prevention and control.

In the case of contracts for construction projects and for security, janitorial and other services, the cost of COVID-19 prevention and control measures shall be borne by the principals or clients of the construction or service contractor. Provisions of existing contracts inconsistent herewith shall be deemed amended accordingly.

No cost related or incidental to COVID-19 prevention and control measures shall be charged directly or indirectly to the workers. (Section 2 of DOLE Labor Advisory No. 18)

Q: May employers require employees to go on forced or mandatory leave without pay during the period GCQ or thereafter?

A: YES. *Employers may require employees to go on a mandatory leave without pay, provided that the same does not exceed six (6) months. After six (6) months, the employees should either be recalled back to work or permanently retrenched following the requirements of law. Otherwise, the employer may be held liable for illegal dismissal. (Article 286 of the Labor Code; Airborne Maintenance and Allied Services, Inc. v. Egos [2019]).*

Q: May employers impose a reduced number of workdays per week with a corresponding reduction in pay?

A: YES. *As an alternative to termination of employment or closure of business, employers may, after prior consultation with the employees, impose flexible work arrangements such as a compressed workweek or a reduction in the number of workdays per week. In case of the latter, the principle of "no work, no pay" shall apply, applying all unutilized leave credits first, if any.*

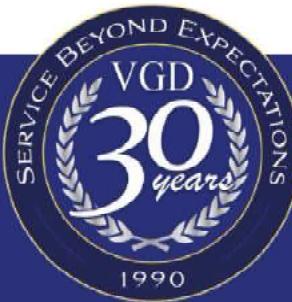
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(Sec. 4 of DOLE Labor Advisory No. 17, Series of 2020; Department Advisory No. 2, Series 2009; Coca-Cola Bottlers Philippines, Inc. v. Iloilo Coca-Cola Plant Employees Labor Union)

Q: May the employer make temporary adjustments to the employee's wage and other wage benefits during the period of MECQ or GCQ?

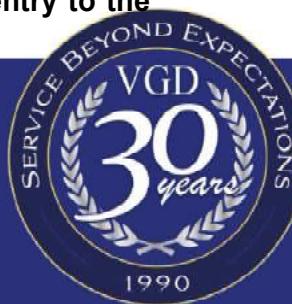
A: YES. Temporary adjustments to the employee's wage and other wage benefits may be made provided that the concerned employee has voluntarily agreed in writing, and that the same shall not exceed a period of six (6) months or such period as may be agreed upon in the collective bargaining agreement, if any. After such period, employers and employees shall review their agreement and agree to renew the same, should the necessity persist. (Sec. 5 of DOLE Labor Advisory No. 17, Series of 2020)

Q: What are the entitlements of an employee who has been separated from employment due to an authorized cause?

A: *The employee shall be entitled to the payment of his final pay, which shall include: all unpaid earned salary; the cash conversion of all unused Service Incentive Leaves; the cash conversion of all unused vacation or sick leaves, if commutable; prorated 13th month pay; retirement pay, if applicable; income tax claim for the excess of taxes withheld, if applicable; all other types of compensation as stipulated in an individual or collective bargaining agreement; and the return of cash bond or deposit, if any. (DOLE Labor Advisory No. 6, Series of 2020)*

Q: May employers require employees to undergo mandatory temperature checks and disclosure of personal health information prior to their entry to the work premises?

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A: YES. *This is required under the DTI and DOLE Interim Guidelines, which the employees are dutybound to comply with. Employers, however, are reminded to collect only such information as may be necessary to facilitate in contact tracing and must ensure that appropriate safeguards are in place to ensure the security of forms and personal data contained therein. (National Privacy Commission Frequently Asked Questions Concerning the State of Public Health Emergency and the COVID response at <https://www.privacy.gov.ph/2020/03/npc-phe-bulletin-no-3-collect-what-is-necessary-disclose-only-to-the-proper-authority/>)*

Q: Are employers required to submit a report of illnesses, diseases, or injuries to the DOLE?

A: YES. *The employer shall submit to a monthly report of illnesses, diseases, and injuries using the DOLE Work Accident or Illness Report Form ("WAIR Form") to the DOLE Regional Office and copy furnish the Department of Health.*

A copy of the WAIR Form may be downloaded from the DOLE website at <http://ro10.dole.gov.ph/default.php?retsamlakygee=23&resource=617a4046ef07a0d99851942247a994cf9>. (DTI and DOLE Interim Guidelines)

Q: May the employer be required to shoulder the cost of treatment for employees who become infected with COVID-19 sometime after being required to report to work, whether contracted at the workplace or in the course of the employee's travels thereto?

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A: NO. Under the DTI and DOLE Guidelines, there is no requirement for the employer to shoulder the cost of hospitalization and treatment of an employee who contracts COVID-19, whether contracted at the workplace or in the course of his travels thereto. Employers, however, are strongly advised to have returning employees execute a waiver of liability and hold harmless agreement to insulate themselves from any future claim or liability.

RENTAL

Q: Does the thirty (30) day grace period on residential and commercial rents continue to apply to areas under MECQ and GCQ?

A: YES. *The due dates of residential and commercial rents falling due within a declared ECQ, MECQ, and GCQ shall be subject to a thirty (30) day grace period.*

For residential rents and commercial rents of MSMEs and sectors not permitted to operate during the ECQ, MECQ and GWCQ, the grace period shall commence from the last due date or from the lifting of the ECQ, MECQ, or GCQ, whichever is longer, without incurring interests, penalties, fees, and other charges. (DTI Memorandum Circular No. 20-29).

Q: How shall the thirty (30) day grace period and the six (6) month amortization be applied for lessees who would wish to avail thereof?

A: *Cumulative amount of rents falling due within any of the covered community quarantine periods shall be equally amortized in the next six (6) months following the end of the thirty (30) day grace period.*

To avail of the six (6) month concession, the lessee shall provide the lessor a signed promissory note or letter, undertaking to pay the deferred rents in accordance with DTI Memorandum Circular No. 20-12, and failure thereof shall make such deferred rents due and demandable immediately following the end of the thirty (30) day grace period. (DTI Memorandum Circular No. 20-29)

TAXES

Q: What is the new deadline for the availment of tax amnesty delinquency?

A: *Any person, whether natural or juridical, with internal revenue tax liabilities covering taxable year 2017 and prior years may avail tax amnesty on delinquencies until 31 December 2020. (Bureau of Internal Revenue ["BIR"] Revenue Regulation No 15-2020)*

Q: What are the due dates for the application of Value Added Tax ("VAT") Refund for the taxable quarters affected by the implementation of the ECQ?

A: *The filing of claims for VAT refund for the following taxable quarters shall be due on dates hereinbelow specified:*

*Calendar Quarter ending 31 March 2018 - 5 July 2020
Fiscal Quarter ending 30 April 2018 - 31 July 2020
Fiscal Quarter ending 31 May 2018 - 15 August 2020
Calendar Quarter ending 31 June 2018 - 31 August 2020*

The periods above indicated shall not apply to areas not yet declared to be in GCQ. In which case, the deadline shall be thirty (30) days from the lifting of the ECQ or MECQ.

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