

CCS Insights: Is Retrenchment an instant option - 3: Movement Control Order

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Movement Control Order

With the implementation of the Movement Control Order ("MCO") pursuant to The Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 ("Regulations") which lapsed on 31 March 2020:

With the exception of businesses deemed essential under the Regulations, every business whose employees cannot work remotely (work from home) must cease their operations during the relevant period (Note 1).*

Six set of regulations have been issued thereafter and are in force from 1 April 2020 to 9 June 2020 ("New Regulations").

P.U.(A) 109	Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 2) Regulations 2020
P.U.(A) 112	Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 2) (Amendment) Regulations 2020
P.U.(A) 117	Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 3) Regulations 2020
P.U.(A) 134	Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 4) Regulations 2020
P.U.(A) 136	Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 5) Regulations 2020
P.U.(A) 147	Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) (No. 6) Regulations 2020

As a result of the Order, many of the businesses operating in Malaysia are legally obligated to cease operations temporarily (* Note 1).

*(*Note 1): However, under a new conditional aspect to the MCO, subject to conditions and standard operating procedure, almost all economic sectors and business activities are allowed to resume business from the 4 May onwards.*

The enforcement of the MCO has a purpose. There is social responsibility in the context of health, safety and the general welfare of the population.

However, the impact of the enforcement of the MCO is that both employers and employees suffer adverse consequences.

Refer to the FAQ and Guidelines issued on 19 March 2020 by the Ministry of Human Resources pertaining to Covid-19 and the MCO:

The guidelines forces employers to pay full wages and allowances to all employees during the duration of the order from March 18 -31 although workers were barred from working, as the vast majority of the offices, factories and businesses were ordered closed.

However, this requirement's gotten some criticism.

Most of the employers are confused about the different opinions expressed by the Human Resources Department, human resources consultants and even lawyers, because according to the Guideline issued by the Human Resources Department, employees who cannot work during this period are entitled to full pay.

However, Human Resources Department seems to be "silence" on whether or not mutual agreement by both parties is allowed.

In the Economic Stimulus Package announced on 6 April 2020, Prime Minister Muhyiddin Yassin announced that he understood the difficulties faced by employers in retaining their employees in these trying times.

In this regard, the Government encourages employers to actively engage with their employees on employment terms including the **options of pay cuts and unpaid leave** during the MCO period.

Employers and employees may refer to the Department of Labour to seek advice on solutions for issues raised.

Any negotiations should be subjected to employment laws currently being enforced (e.g. **the Provisions for minimum wages**) The objective is that the rights and welfare of both sides are taken care of, hopefully.

行动管制令

于 2020 年 3 月 31 日结束，在《2020 年预防及控制传染病（受感染区域内的措施）条例（以下简称“条例”）》下所执行的行动管制令：

除了在《条例》下被列为至关重要的服务领域外，其他无法安排员工进行远程(在家)工作的商家，在行动管制令期间都必需停止运营 (*注 1)

随后政府颁布了五项条例（“新条例”），在 2020 年 4 月 1 日至 2020 年 6 月 9 日这段时间执行。

P.U.(A) 109	2020 年预防及控制传染病(受感染区域内的措施)（第 2）条例
P.U.(A) 112	2020 年预防及控制传染病(受感染区域内的措施)（第 2） （修订）条例
P.U.(A) 117	2020 年预防及控制传染病(受感染区域内的措施)（第 3）条例
P.U.(A) 134	2020 年预防及控制传染病(受感染区域内的措施)（第 4）条例
P.U.(A) 136	2020 年预防及控制传染病(受感染区域内的措施)（第 5）条例
P.U.(A) 147	2020 年预防及控制传染病(受感染区域内的措施)（第 6）条例

限制于有关指令，大部分在马来西亚运营的企业，在法律上有责任暂时停止其业务 (*注 1)。

(*注 1): 然而，在新的有条件行动管制令下，限制于相关条件和标准操作程序，

从 5 月 4 日起，几乎所有经济领域和商业活动都可以恢复营业。

政府执行行动管制令是有其目的的。对于人民的健康、安全和整体上的福利，执行行动管制令其实是一种社会责任。

然而，执行行动管制令却让雇主和员工同时遭受到严重的影响。

有鉴于此，人力资源部于 2020 年 3 月 19 日发布了有关行动管制令期间的常见问题解答和指南：

在 3 月 18 日至 31 日这段行动管制期间，由于绝大部分办公室、工厂和企业都需要停业，因此员工无法工作，虽然如此雇主却需要支付全薪给所有员工。

但是，这项指示却遭受批评。

大多数雇主对人力资源部、人力资源顾问，甚至律师纷纷表达了不同的意见感到困惑；因为根据人力资源部的指南，在这段期间员工虽然无法工作但是却可以获得全薪。

然而，人力资源部对于是否允许劳资双方协商，却没有明确说清楚。

2020 年 4 月 6 日，在宣布经济振兴方案时，首相慕尤丁同时也宣称他了解雇主在这段艰难时期要留住员工所面临的困难。

因此，政府鼓励雇主在行动管制期间，按照雇用条件与雇员积极互动和协商，共同找出可行的方案，这包括：减薪和无薪假期的安排。

针对解决方案的建议，雇主和雇员也可以向劳工部寻求协助。

有一点要注意的是，任何的协商都不能够违反劳工法令（例如：最低薪金的规定），主要的目的是希望劳资双方的权利和福利，都获得照顾及保障。

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