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JSM

# Pandemics and the Workplace

## *A regional analysis*

3rd Edition



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*This Report was originally issued by Johnson Stokes & Master in December 2006. It has been updated only to reflect the change of name to JSM and combination with Mayer Brown in January 2008. The contents of the Report reflect the law and practice of the relevant jurisdictions as at December 2006.*

*In this Report, each of the participating law firms has outlined some of the main legal issues relating to pandemics and the work place. This Report provides general advice only and should not be treated as a substitute for legal advice. While care has been taken by each participating law firm to ensure that details relating to their respective jurisdiction are correct, no responsibility can be taken by any of the participating law firms for losses arising from reliance upon the contents of this Report. Should you have any specific questions please contact the lawyer(s) in the relevant jurisdiction whose contact details appear at the end of this Report.*



There has been much coverage in the global press about the possibility of an influenza pandemic. Whilst many may consider that the coverage is unduly dramatic (think Y2K!) the facts are that a flu pandemic is overdue and recent events (most notably the arrival of avian flu) indicate that the risk of a pandemic is real.

The bottom line is that businesses are faced with the choice of ignoring the risk, adopting the ostrich position and keeping fingers crossed or putting in place appropriate policies and procedures to protect their business should a pandemic arise. One of the considerations any business will need to consider in putting together appropriate policies and procedures is the legal constraints.

This report, which has been created by leading law firms in the Asian region all of whom are members of the Employment Law Alliance<sup>1</sup>, sets out the legal constraints applicable in jurisdictions throughout Asia.

Lawyers in each of the participating jurisdictions were asked to respond the following questions:

- Do I need to prepare and have in place a Workplace Influenza Pandemic Response Plan?
- What are my legal obligations to my employees in the event of a pandemic?
- What are my legal obligations to my customers and visitors attending my office?
- What insurance am I required to take out?

We have presented the lawyers' responses into two formats. Part A is "question specific", so each question is answered by each jurisdiction in turn. Part B is "jurisdiction specific", so in this part the responses of a particular jurisdiction to all of questions are put together.

This report is designed to help businesses with operations throughout Asia to put together a policy to protect their business from the risks arising from an influenza pandemic. We recognise of course that the legal constraints are just one of the considerations for such a policy and that any policy must be tailored for the individual requirements of a business.

I do hope you find this report useful. Should you wish to contact lawyers in any of the jurisdiction, relevant contact details are set out at the end of each section in Part B and then also at the end of the report.

**Duncan Abate**  
**Partner**  
**JSM**

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<sup>1</sup>The Employment Law Alliance ("ELA") is an organisation comprising 2000 of the leading employment and labour lawyers from more than 50 nations. With a presence in every US state and in over 300 cities worldwide the ELA can provide a quick response to any query a client may have on labour matters on a global level.

## Part A

# Overview of legal obligations

## Q1. Do I need to prepare and have in place a Workplace Influenza Pandemic Response Plan (the “Plan”)?


Country	Legal Minimum	Best Practice
 Hong Kong	<p>There is no strict legal obligation on employers to have a Plan. However, the Occupational Safety and Health Ordinance requires all employers in Hong Kong to, so far as reasonably practicable, ensure the safety and health at work of all the employer’s employees. Depending on the extent of the pandemic, one reasonably practicable step an employer could take is to develop a Plan dealing with workplace health and safety issues.</p>	<p>We recommend that employers prepare a detailed Plan and implement it. The more detailed the Plan the better prepared an employer will be to cope with any pandemic. A Plan should deal with preparations for a pandemic, what happens during a pandemic and the steps to be taken after a pandemic. Both workplace health and safety issues and business continuity issues should be covered.</p> <p>See Part B for more details of what should go into a Plan.</p>
 Australia	<p>There are no specific legal requirements for employers in Australia to implement Plans (i.e. there is no specific requirement under State, Territory or Federal legislation for employers to implement Plans).</p> <p>However, occupational health and safety legislation in each State, Territory and the Commonwealth requires employers to, so far as is reasonably practicable, provide and maintain safe and healthy “working environments” and workplaces for employees and contractors.</p> <p>A Plan which deals with workplace health and safety issues, would be a “reasonably practicable” measure to comply with obligations under occupational health and safety legislation.</p>	<p>We recommend that employers prepare and implement Plans.</p> <p>Plans should include the preparations that have been taken to date in relation to a pandemic as well as what to do during and after an outbreak.</p> <p>Plans should cover both occupational health and safety, employment and business continuity issues.</p> <p>See Part B for more details of what should go into a Plan.</p>

## Q1. Do I need to prepare and have in place a Workplace Influenza Pandemic Response Plan (the “Plan”)? (cont’d)

Country	Legal Minimum	Best Practice
 India	<p>There is no legislative requirement for an employer to have in place a Plan.</p> <p>However, Directive Principles of State Policy enshrined in the Constitution require the State (not private enterprises) to make provisions for assistance in unemployment, old age, sickness, undeserved want, in accordance with principles of “non-discrimination” and “reasonable differentiation”.</p>	<p>Since the threat of Avian Flu has not assumed proportions of a pandemic in India, we recommend a contingency plan, which may be cost effective to the employer. It is important that the costs incurred to develop such plan / policy be justified.</p> <p>Employers need to make specific provisions on long term / enhanced sickness policies. A Plan should deal with both workplace health and safety issues and business continuity issues.</p> <p>See Part B for more details of what should go into a Plan.</p>
 Indonesia	<p>There is no strict legal requirement for employers to have a Plan.</p>	<p>Preparation is the key to containing spread of the disease in the workplace and therefore disruption to business. A Plan should deal with both workplace health and safety issues and business continuity issues.</p>
 Malaysia	<p>There is no legal obligation on employers to have a Plan as the Occupational Safety and Health Act 1994 requires all employers in Malaysia to:</p> <ul style="list-style-type: none"> <li>• secure the safety, health and welfare of persons at work against risks to safety or health arising out of the activities of persons at work; and</li> <li>• to protect persons at a place of work other than persons at work against risks to safety or health arising out of the activities of persons at work.</li> </ul> <p>The employer also has a duty to notify the nearest occupational safety and health office of any accident, dangerous occurrence, occupational poisoning or occupational disease which has occurred or is likely to occur at the place of work.</p>	<p>We recommend that employers prepare a detailed Plan and implement it. The more detailed the Plan the better prepared an employer will be to cope with any pandemic. A Plan should deal with preparations for a pandemic, what happens during a pandemic and the steps to be taken after a pandemic. Both workplace health and safety issues and business continuity issues should be covered.</p> <p>See Part B Section 4 (Malaysia) for more details of what should go into a Plan.</p>



## Q1. Do I need to prepare and have in place a Workplace Influenza Pandemic Response Plan (the “Plan”)? (cont’d)

Country	Legal Minimum	Best Practice
 Malaysia	<p>Section 7 of the Occupational Safety and Health (Notification of accident, dangerous occurrence, occupational poisoning and occupational disease) Regulations 2004 provides that where a person at work suffers or likely to suffer from one of the occupational poisonings or occupational diseases caused by work involving a pathogen which presents a hazard to human health or exposure to moulds, including fungal spores or heterologous proteins during work in, inter alia caring for or handling birds, the employer shall, within 7 days, send a report thereof to the nearest Department of Occupational Safety and Health office in an approved form. The same duty applies to any registered medical practitioner or medical officer attending to, or called in to visit, a patient whom he believes to be suffering from any of the disease or poisoning listed in the Third Schedule.</p> <p>N/B: The Occupational Safety and Health Act 1994 applies throughout Malaysia to the following industries:</p> <ul style="list-style-type: none"> <li>• Manufacturing</li> <li>• Mining and Quarrying</li> <li>• Construction</li> <li>• Agriculture</li> <li>• Forestry and Fishing</li> <li>• Utilities such as:                             <ul style="list-style-type: none"> <li>◦ Electricity</li> <li>◦ Gas</li> <li>◦ Water and Sanitary Services</li> </ul> </li> <li>• Transport, Storage and Communication</li> <li>• Wholesale and Retail Trades</li> <li>• Hotels and Restaurants</li> <li>• Finance</li> <li>• Insurance</li> <li>• Real Estate and Business Services</li> <li>• Public Services</li> <li>• Statutory Authorities</li> </ul>	

## Q1. Do I need to prepare and have in place a Workplace Influenza Pandemic Response Plan (the “Plan”)? (cont’d)

Country	Legal Minimum	Best Practice
 New Zealand	<p>While there are no specific obligations on New Zealand employers to prepare and implement Workplace Influenza Pandemic Response Plans per se, the Health and Safety Employment Act 1992 requires all employers to take all practicable steps to ensure the safety of employees while at work. This statutory obligation requires employers to assess what harm (if any) employees may be exposed to in the workplace as a result of an influenza pandemic, and to take all reasonably practicable steps to minimise the risks of harm in the workplace associated with this.</p>	<p>Depending on the nature and extent of the pandemic, it is recommended that employers have plans in place in advance detailing:</p> <ul style="list-style-type: none"> <li>• the steps that should be taken to ensure the safety of employees while at work, including the steps to identify risks of employees becoming infected, and steps to minimise any such risks;</li> <li>• the potential impacts on an employer's business should staff become infected and / or it be required to partially or fully close its operation, and for what periods;</li> <li>• the need to discuss the possibility of workplace closure with employees, including methods of such closure and identifying whether services can be delivered at alternative locations or from home;</li> <li>• identifying what parts of an employer's operation (if any) may remain in operation during a pandemic; and</li> <li>• the various scenarios for work arrangements, e.g.: <ul style="list-style-type: none"> <li>○ what will happen to staff who are not able to work from remote alternative locations and will the employer pay wages where work is ‘frustrated’ for reasons beyond its control</li> <li>○ will staff be required to use accrued annual leave (14 days notice must be given)</li> <li>○ more severe measures (including pay cuts, termination of employment for frustration of contract or redundancy) may need to be considered if the pandemic is lengthy</li> </ul> </li> </ul>



## Q1. Do I need to prepare and have in place a Workplace Influenza Pandemic Response Plan (the “Plan”)? (cont’d)

Country	Legal Minimum	Best Practice
 People's Republic of China	<p>There are no specific regulations in the PRC Law mandating the preparation of a Workplace Influenza Pandemic Response Plan.</p> <p>However, an entity which employs more than 200 (more than 100 in Shanghai according to the local regulations) non-local persons (being persons living in a particular city without registered permanent residence in such city) must take sanitary measures to prevent and control the infectious disease.</p>	<p>We recommend that employers prepare a detailed Plan and implement it. The more detailed the Plan the better prepared an employer will be to cope with any pandemic. A Plan should deal with preparations for a pandemic, what happens during a pandemic and the steps to be taken after a pandemic. Both workplace health and safety issues and business continuity issues should be covered.</p> <p>See Part B for more details of what should go into a Plan.</p>
 Singapore	<p>There is no strict legal obligation on employers to have a Plan. However, based on Singapore laws and regulations pertaining to workplace safety and health which are deemed written into every contract of employment, employers are required to ensure the health and safety of all their employees in the workplace. This means that employers should adopt practicable measures to deal with the potential occurrence of the pandemic.</p>	<p>We recommend that an employer come up with a comprehensive and realistic Workplace Influenza Pandemic Readiness and Response Plan to deal with influenza pandemic in the workplace based on Ministry of Health's Influenza Pandemic Readiness and Preparedness Plan and Guide on Infection Control Measures for Workplaces. Both workplace health and safety issues and business continuity issues should be covered.</p> <p>See Part B for more details of what should go into such Plan.</p>
 South Korea	<p>There is no specific legal requirement under Korean law, or in any regulations of the Ministry of Labour or the Ministry of Health and Welfare, for an employer to prepare and have in place a Plan.</p> <p>However, the Industrial Safety and Health Act requires the employer to appoint a health and safety officer (Art. 13), and to have that officer take charge of preparing a “harm and danger prevention plan” with responses and procedures to minimise known or foreseeable risks to workplace safety and health.</p>	<p>As influenza pandemics currently present a known or foreseeable risk to the Korean workplace, it is recommended that all employers immediately adopt elements of a Plan into their existing harm and danger prevention plans.</p>

## Q1. Do I need to prepare and have in place a Workplace Influenza Pandemic Response Plan (the “Plan”)? (cont’d)

Country	Legal Minimum	Best Practice
 Taiwan	<p>There are no specific legal requirements for employers in Taiwan to implement Plans.</p> <p>However, the relevant safety and health legislation requires that all employers, depending upon circumstances, take necessary precautions against occupational hazards to ensure the safety and health of their employees at work. It would be necessary for an employer to prepare and implement Plans to comply with the obligations under the relevant safety and health legislation.</p>	<p>We recommend that employers prepare a detailed Plan and implement it. Plans should include the preparations for a pandemic, the steps that should be taken during and after a pandemic. Both workplace health and safety issues and business continuity issues should be covered.</p> <p>See Part B for more details of what should go into a Plan.</p>
 Thailand	<p>There is no strict legal requirement for employers to have a Plan under Thai labour laws.</p>	<p>Preparation is the key to containing spread of the disease in the workplace and therefore disruption to business. A Plan should deal with both workplace health and safety issues and business continuity issues.</p>
 Vietnam	<p>There is no legal requirement for employers to have a Plan.</p>	<p>The employer is encouraged to prepare a Plan, especially where it engages in pandemic related businesses. A Plan should deal with both workplace health and safety issues and business continuity issues and most importantly, focus on information dissemination and improvement of knowledge of employees about pandemics.</p>



## Q2. What are my legal obligations to my employees in the event of a pandemic?

Country	Legal Minimum	Best Practice
 Hong Kong	<p>The main areas of legal liability will include:</p> <ul style="list-style-type: none"> <li>• ensuring so far as reasonably practicable the workplace health and safety of employees (obligations under "Occupational Safety and Health Ordinance" and common law duty of care);</li> <li>• complying with obligations under the contract of employment and the Employment Ordinance (e.g. continuing to pay wages, ensuring the employer works within the terms of the contract of employment);</li> <li>• complying with the Disability Discrimination Ordinance; and</li> <li>• complying with the Employees' Compensation Ordinance (e.g. having appropriate insurance and timely reporting of illnesses / death).</li> </ul> <p>See Appendix 1 for more details.</p>	<p>Communication with employees and being flexible on enforcing requirements imposed on employees under their contract of employment will be important in maintaining employee relations and reducing anxiety and panic during a pandemic. Therefore, depending on the circumstances, employers may wish to:</p> <ul style="list-style-type: none"> <li>• discuss with staff about the possibility of a workplace closure prior to closing;</li> <li>• allow employees to take annual leave or unpaid leave once sick leave has been exhausted;</li> <li>• allow employees to work from home; and</li> <li>• explore salary reduction or unpaid leave as an alternative to termination of employment.</li> </ul>
 Australia	<p>The main legal obligations in Australia include:</p> <ul style="list-style-type: none"> <li>• complying with general obligations in occupational health and safety legislation in each State, Territory and the Commonwealth (where applicable) to, so far as is reasonably practicable, provide and maintain a safe "working environment" for employees and contractors and ensure that workplaces are free from risks to the health, safety and welfare of employees;</li> <li>• employers must identify and assess hazards and risks associated with an influenza pandemic and implement measures to eliminate or minimise risks to employees and contractors, so far as is reasonably practicable;</li> </ul>	<p>Obligations under occupational health and safety legislation extend to ensuring that employees and contractors are provided with adequate information, instruction, training and supervision to work in a safe and healthy manner (including providing employees with information about health and safety arrangements employers have taken to manage the risks associated with an influenza pandemic).</p>

## Q2. What are my legal obligations to my employees in the event of a pandemic? (cont'd)

Country	Legal Minimum	Best Practice
 Australia	<ul style="list-style-type: none"> <li>employers are subject to common law duties of care in relation to their employees. Employees who suffer work-related injuries or illnesses can claim damages in respect of an employer's negligence in certain circumstances (in some States negligence claims are subject to a serious injury threshold);</li> <li>employers must take steps to eliminate or minimise reasonably foreseeable risks to employees;</li> <li>complying with state and federal anti-discrimination legislation which prohibits discrimination in relation to employment on the basis of an employee's "disability" (including disease) (i.e. Disability Discrimination Act 1992 (Cth)) or "impairment" (including disease) (i.e. Equal Opportunity Act 1995 (Vic)).</li> <li>it is a defence to discriminate against an employee (or other person) on the basis of a disability if the disability is an infectious disease and the discrimination is reasonably necessary to protect public health;</li> <li>employers are subject to workers' compensation schemes in each State and Territory and at the Commonwealth level. The basic principle of workers' compensation is that employees ("workers") are entitled to compensation for injuries (including diseases) which arise out of or in the course of employment; and</li> <li>employers are required to maintain appropriate workers' compensation insurance under the workers' compensation legislation in each State and Territory.</li> </ul>	<p>Obligations are also imposed under occupational health and safety legislation on persons who carry on business "undertakings". An employer must ensure that persons (other than employees) are not exposed to risks arising from the conduct of the employer's undertaking. An employer's "undertaking" includes any operations or activities in areas where persons could be infected with the relevant influenza virus and operations or activities in respect of which employees or contractors could come into contact with persons who are (or may be) infected with the relevant influenza virus.</p> <p>General obligations are also imposed on persons who "manage or control" workplaces.</p> <p>Plans would assist in reducing anxiety and uncertainty amongst employees (which could cause additional health and safety risks in the event of a pandemic). Therefore, depending on the individual situation, employers may wish to:</p> <ul style="list-style-type: none"> <li>discuss with staff the possibility of workplaces closing prior to an outbreak and measures that will (or may) be taken in respect of employment entitlements and pay;</li> <li>discuss options to work flexibly with employees to maximise the use of employment entitlements and to allow them to work flexibly - for example, flexible arrangements for sick leave, annual leave and working from home; and</li> <li>communicate with employees the content of Plans and the approach being taken to protect staff and customers.</li> </ul>

## Q2. What are my legal obligations to my employees in the event of a pandemic? (cont'd)



Country	Legal Minimum	Best Practice
 India	<p>Existing statutory benefits do not specifically address pandemics but tend to address other disabilities for employees in the workplace.</p> <p>The main legal obligations imposed on an employer in India are:</p> <ul style="list-style-type: none"> <li>• to comply with general obligations relating to occupational health and safety legislation in each State;</li> <li>• to provide employees with the statutory level of medical benefits and income security;</li> <li>• to take reasonably steps to facilitate physical and vocational rehabilitation; and</li> <li>• to take reasonably steps to prevent / reduce ill health and accidents in employment.</li> </ul>	<p>Employers should have a plan designed to set out how employees should be treated in a pandemic situation. This may be created in consultation with the employees.</p>
 Indonesia	<p>The main areas of legal liability will include:</p> <ul style="list-style-type: none"> <li>• compliance with general health and safety regulations but none specifically mention employer duties in response to pandemic illness;</li> <li>• compliance with Employee Social Security ("Jamsostek") regulations regarding employee medical benefits in the case of an employee suffering illness arising from work or upon termination of the employment relationship;</li> <li>• compliance with any private employee health insurance benefits plan;</li> <li>• compliance with contract of employment, Company Regulation and Collective Labour Agreement and labour law regarding statutory and agreed sick leave entitlements, entitlements upon termination, extended illness and death; and</li> <li>• compliance with Work Safety Law to ensure so far as reasonably practicable the health and safety of employees in the workplace.</li> </ul>	<p>In addition to compliance with the regulations indicated, employers may consider providing private health insurance coverage and should be ready to implement the Plan noted in Q1 above.</p>

## Q2. What are my legal obligations to my employees in the event of a pandemic? (cont'd)



Country	Legal Minimum	Best Practice
 Malaysia	<p>Pursuant to section 15, of the Occupational Safety and Health Act, the employer has a duty to ensure so far as is practicable, the safety, health and welfare of all its employees by:</p> <ul style="list-style-type: none"> <li>• the provision and maintenance of plant and systems of work that are, so far as is practicable, safe and without risks to health;</li> <li>• the making of arrangements for ensuring, so far as is practicable the safety and absence of risks to health in connection with the use or operation, handling, storage and transport of plant and substances;</li> <li>• the provision of such information, instruction, training and supervision as is necessary to ensure the maintenance of any place of work under the control of the employer in a condition that is safe and without risks to health;</li> <li>• the provision and maintenance of the means of access to and egress from the workplace that is safe and without such risks; and</li> <li>• the provision and maintenance of a working environment for employees that is, so far as is practicable, safe, without risks to health, and adequate as regards facilities for their welfare at work.</li> </ul>	<p>While an employer has no legal obligations to advise employees of its Plan or what it proposes to do in the event of a pandemic, communication with employees and being flexible on legal requirements will be important in maintaining employee relations and reducing anxiety and panic. For example, depending on the circumstances, employers may wish to:</p> <ul style="list-style-type: none"> <li>• discuss with staff about the possibility of a workplace closure prior to closing;</li> <li>• allow employees to take annual leave or unpaid leave once sick leave has been exhausted;</li> <li>• allow employees to work from home; and</li> <li>• explore salary reduction or unpaid leave as an alternative to termination of employment.</li> </ul>
 New Zealand	<p>The legal obligations include:</p> <ul style="list-style-type: none"> <li>• ensuring so far as reasonably practicable the workplace health and safety of employees (obligations under the Health and Safety Employment Act and common law duty of care);</li> <li>• allowing an employee to refuse to do any work where there are reasonable grounds to believe that serious harm will be caused to the employee;</li> <li>• complying with all obligations under employees' employment agreements;</li> </ul>	<p>In addition to the legal obligations outlined in this section, it is recommended that employers discuss the possibility of workplace closure with their staff, including identifying whether services can be delivered outside of the workplace and methods of such closure.</p> <p>In the event that the employer decides, or is required to, suspend business during a pandemic, the employment conditions during the business suspension should be discussed with employees in advance.</p>





## Q2. What are my legal obligations to my employees in the event of a pandemic? (cont'd)

Country	Legal Minimum	Best Practice
 New Zealand	<ul style="list-style-type: none"> <li>• complying with obligations to employees under the Employment Relations Act 2000 and the common law, including acting in good faith, not unilaterally amending terms of employment, and ensuring fair consultation is undertaken prior to taking any action which may negatively impact on employees;</li> <li>• complying with obligations to employees under the Holidays Act, including paying employees sick leave for any period they (or their dependants) are sick, allowing employees to utilise accrued annual leave if their sick leave has been exhausted, and giving employees 14 days notice to take accrued annual leave if no agreement can be reached on when this is to be taken; and</li> <li>• complying with obligations to employers under the Wages Protection Act, including not reducing or ceasing an employee's pay without their agreement.</li> </ul>	<p>In the event that parts of the business need to remain in operation during a pandemic, employees should be made aware of how they will be managed and strategies should be developed to minimise risk to working staff such as working remotely from home or other social distancing measures.</p>
 People's Republic of China	<p>Should quarantine be imposed then an employer must continue to pay its employees provided that they have not contracted the infectious disease.</p> <p>See Part B for more details.</p>	<p>While no employer has a legal obligation to advise employees of its Plan or what it proposes to do in the event of a pandemic, communication with employees and being flexible on legal requirements will be important in maintaining employee relations and reducing anxiety and panic. For example, depending on the circumstances, employers may wish to:</p> <ul style="list-style-type: none"> <li>• discuss with staff about the possibility of a workplace closure prior to closing;</li> <li>• allow employees to take annual leave or unpaid leave once sick leave has been exhausted;</li> <li>• allow employees to work from home; and</li> <li>• explore salary reduction or unpaid leave as an alternative to termination of employment.</li> </ul>

## Q2. What are my legal obligations to my employees in the event of a pandemic? (cont'd)

Country	Legal Minimum	Best Practice
 Singapore	<p>The main areas of legal obligations based on the Employment Act and the Workplace Safety &amp; Health Act include:</p> <ul style="list-style-type: none"> <li>• workplace health and safety of employees;</li> <li>• obligations under the contract of employment such as continuous payment of wages and other employment-related entitlements; and</li> <li>• non-discrimination in the workplace.</li> </ul> <p>See Appendix 3 for more details.</p> <p>On the other hand, the main areas of legal liabilities based on the Workplace Safety &amp; Health Act and the Workmen's Compensation Act include:</p> <ul style="list-style-type: none"> <li>• penalty for failure to maintain a workplace that is safe and without risk to health;</li> <li>• penalty for failure to report occurrence of occupational disease; and</li> <li>• compensation for occupational disease.</li> </ul> <p>See Appendix 4 for more details.</p>	<p>An employer must ensure that the organisation complies with the minimum legal requirements in the event of a pandemic. However, in its exercise of management prerogative, the employer may opt to introduce measures to protect its business which may include:</p> <ul style="list-style-type: none"> <li>• allowing employees to take forced leave;</li> <li>• exploring salary reduction; or</li> <li>• exploring the possibility of eventual termination of employment.</li> </ul> <p>It must be emphasized that the employer must be circumspect in its exercise of this prerogative, taking into consideration the interest of its employees vis-à-vis the welfare of the society in general.</p> <p>It is suggested that an employer familiarise itself with the various circumstances under which it may be held liable in the event of a pandemic so as not to incur unnecessary expenses and to prevent disruption of work.</p>
 South Korea	<p>Art. 5 of the Industrial Safety and Health Act ("ISHA") requires an employer to prohibit or restrict the work of an employee affected by a contagious disease. Further, under the Prevention of Contagious Diseases Act ("PCDA") Art. 30, a person infected with a contagious disease has a legal duty not to come to work if the person's duties will bring him or her into contact with the general public. It is our legal opinion that the employer has a duty to enforce the employee's compliance with PCDA Art. 30.</p> <p>PCDA and ISHA do not establish private causes of action against an employer for not observing legal duties under those statutes. However, claims sounding in the tort of negligence will be able to rely on the existence of these duties and the employer's failure to observe as <i>prima facie</i> evidence of negligence by the employer.</p>	<p>In addition to compliance with statutory mandatory insurances, employers may consider provision of private health insurance coverage as a group insurance policy.</p>

## Q2. What are my legal obligations to my employees in the event of a pandemic? (cont'd)

Country	Legal Minimum	Best Practice
 South Korea	<p>In the case an employee becomes ill and the illness is incurred in the course of duties, the employer is required under the Labour Standards Act ("LSA") and other relevant statutes to bear all costs of treatment and to pay statutorily-prescribed compensation for illness or death. This obligation under LSA applies regardless of whether the employer has subscribed for required insurances; an offset is applied to credit the employer for benefits received under mandatory insurances.</p>	
 Taiwan	<p>The main legal obligations include:</p> <ul style="list-style-type: none"> <li>• complying with the obligations under the relevant safety and health legislation to provide employees with a safe and healthy workplace (e.g. taking necessary measures to eliminate risks to the employees);</li> <li>• complying with orders, instructions, guidelines or regulations related to safety, sanitation and environment of the workplace as may be issued under the scrutiny of the competent authority (e.g. quarantine orders); and</li> <li>• complying with obligations under the contract of employment (e.g. employment entitlement).</li> </ul>	<p>In addition to compliance with the obligations under the regulations and employment contracts, it is advisable that the employers communicate with employees, depending on the circumstances, matters which may include:</p> <ul style="list-style-type: none"> <li>• employee absences during a pandemic due to factors such as personal illness, family member illness, community containment measures and quarantines, business closures, and public transportation closures;</li> <li>• employee compensation and sick-leave absences unique to a pandemic; and</li> <li>• flexible workplace and flexible work hours.</li> </ul>

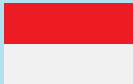

## Q2. What are my legal obligations to my employees in the event of a pandemic? (cont'd)

Country	Legal Minimum	Best Practice
 Thailand	<p>The main areas of legal liability will include:</p> <ul style="list-style-type: none"> <li>ensuring so far as reasonably practicable the workplace health and safety of employees; and</li> <li>compliance with any regulation relates to safety, sanitation and environment of working place which will be announced under the scrutiny of the Committee for Safety, Sanitation and Environment of Working pursuant to the Thai Labour Protection Act B.E. 2541.</li> </ul>	<p>Employers may arrange for the doctor to undertake a medical check and monitor employees.</p> <p>Once any employee takes sick leave, the employee or his / her relatives must inform the employer immediately of the outcome of the medical treatment prior to coming back to work for the employer's consideration.</p> <p>Employers may provide a vaccine to protect the employees against infection.</p>
 Vietnam	<p>As there is no specific legislation on an employer's liabilities in the event of pandemic, the main liabilities would arise under the general laws and would include:</p> <ul style="list-style-type: none"> <li>ensuring so far as reasonably practicable the workplace health and safety of employees (general obligations under the labour laws and common law duty of care);</li> <li>complying with obligations under the contract of employment and the labour laws (e.g. continuing to pay wages unless the employees are entitled to illness allowances from the Social Security Scheme, providing necessary labour safety facilities, etc.); and</li> <li>complying with the orders, instructions and guidelines as may be issued by the State competent bodies from time to time (for example, carrying out dissemination and prevention measures, and complying with the requirements on reporting).</li> </ul>	<p>It would be advisable for an employer to take sufficient preventive measures and maintain contact with the State competent bodies for emergency assistance, and guidelines and instructions. Employers operating in certain types of businesses may have to comply with special regulations issued by the State competent bodies from time to time.</p>

### Q3. What are my legal obligations to my customers and visitors attending my office?


Country	Legal Minimum	Best Practice
 Hong Kong	<p>The main areas of legal liability will include:</p> <ul style="list-style-type: none"> <li>• to report cases where a person is infected with a particular illness under the Prevention of the Spread of Infectious Diseases Regulations; and</li> <li>• liability under the Occupiers' Liability Ordinance.</li> </ul> <p>See Appendix 1 for more details.</p>	<p>Employers should make visitors to its offices aware of any health and safety hazards associated with entering the workplace prior to any intended visit where reasonably practicable.</p>
 Australia	<p>As noted above (in Q1 and 2), employers are subject to obligations under occupational health and safety legislation to ensure that persons (other than employees) are not exposed to risks to health and their safety arising from the conduct of the employer's undertaking.</p> <p>Persons who "control or manage" workplaces must ensure, so far as is reasonably practicable, that workplaces and the means of entering and leaving workplaces are safe and without risk to health.</p> <p>Therefore, employers and persons who control or manage workplaces must identify and assess risks associated with an influenza pandemic and implement measures to eliminate or minimise risks so far as is reasonably practicable. Such measures must include measures to eliminate or minimise the risk of customers and visitors being infected by avian flu.</p>	<p>Employers should make visitors to their premises (including suppliers and customers) aware of any health and safety hazards or risks associated with entering the premises (prior to any intended visit, where practicable). This could include notices on company websites or notices in the press.</p>
 India	<p>Under the Factories Act, 1948 every employer is under an obligation to provide safety and sanitation in the workplace.</p> <p>Visitors to premises may also have common law rights should they contract a disease whilst in the premises of an employer.</p>	<p>The employer may create rules and take measures to minimise and control access to its premises by unauthorised persons.</p>

### Q3. What are my legal obligations to my customers and visitors attending my office? (cont'd)



Country	Legal Minimum	Best Practice
 Indonesia	<p>The principles of occupier's liability are not clearly established under Indonesian law although in theory liability due to "wrongful acts" is a cause of action under the Civil Code. In principle, all persons are responsible to report cases of epidemic illness under health regulations regarding the Prevention of the Spread of Epidemic Diseases and Implementing Guidelines on the Prior Warning System for Unusual Events.</p>	<p>The employer may consider taking appropriate measures to minimize and control access to its premises.</p>
 Malaysia	<p>For the purposes of section 15 of the Occupational Safety and Health Act, an "employee" includes an independent contractor engaged by an employer or a self-employed person and any employee of the independent contractor in relation to matters over which the employer or self-employed person:</p> <ul style="list-style-type: none"> <li>• has control; or</li> <li>• would have had control but for any agreement between the employer or self-employed person and the independent contractor to the contrary.</li> </ul> <p>In addition, since one of the objectives of the Occupational Safety and Health Act includes the protection of persons at the place of work other than persons at work.</p> <p>The legal obligation to customers and visitors attending at the office arises when premises are not as safe as they should reasonably be and this defective state (which includes activities carried out on the premises) causes injury or damage to the Plaintiff. The Malaysian position as regards occupier's liability is based on the English common law position.</p>	<p>Employers should make visitors to its offices aware of any health and safety hazards associated with entering the workplace prior to any intended visit where reasonably practicable.</p>





### Q3. What are my legal obligations to my customers and visitors attending my office? (cont'd)

Country	Legal Minimum	Best Practice
 New Zealand	<p>The main areas of legal liability will include ensuring so far as reasonably practicable the workplace health and safety of customers and visitors to the workplace (obligations under the Health and Safety Employment Act and common law duty of care).</p>	<p>In addition to the legal obligations outlined in this section, it is recommended that employers notify all of their customers of any health and safety hazards associated with entering the workplace, prior to any intended visit, where reasonably practicable.</p>
 People's Republic of China	<p>The main legal obligation as an employer is to report any case of suspected or actual infectious disease to specified organisations. This is required according to Art. 31 of the PRC Law on the Prevention and Cure of Infectious Diseases.</p> <p>See Part B for more details.</p>	<p>Employers should make visitors to its offices aware of any health and safety hazards associated with entering the workplace prior to any intended visit where reasonably practicable.</p>
 Singapore	<p>The Workplace Safety and Health Act requires the employer to take necessary measures to ensure the safety and health of its visitors. It is likewise mandated to make certain that the means of access to and egress from the workplace are safe and without risks to its visitors.</p> <p>See Appendix 3 for more details.</p>	<p>An employer should ensure that visitors to its offices are properly advised of any health and safety hazards associated with entering the workplace. Like the employees, visitors must be acquainted with the measures needed to prevent the spread of the disease such as temperature checks. These are discussed in Part B.</p>
 South Korea	<p>Art. 5 of the Industrial Safety and Health Act ("ISHA") requires an employer to prohibit or restrict the work of an employee affected by a contagious disease. Further, under the Prevention of Contagious Diseases Act ("PCDA") Art. 30, a person infected with a contagious disease has a legal duty not to come to work if the person's duties will bring him or her into contact with the general public. It is our legal opinion that the employer has a duty to enforce the employee's compliance with PCDA Art. 30.</p>	<p>In addition to compliance with statutory mandatory insurances, employers may consider provision of private health insurance coverage as a group insurance policy.</p>

### Q3. What are my legal obligations to my customers and visitors attending my office? (cont'd)

Country	Legal Minimum	Best Practice
 South Korea	<p>PCDA and ISHA do not establish private causes of action against an employer for not observing legal duties under those statutes. However, claims sounding in the tort of negligence will be able to rely on the existence of these duties and the employer's failure to observe as <i>prima facie</i> evidence of negligence by the employer.</p> <p>In the case an employee becomes ill and the illness is incurred in the course of duties, the employer is required under the Labour Standards Act ("LSA") and other relevant statutes to bear all costs of treatment and to pay statutorily-prescribed compensation for illness or death. This obligation under LSA applies regardless of whether the employer has subscribed for required insurances; an offset is applied to credit the employer for benefits received under mandatory insurances.</p> <p>Legal obligations to customers and visitors are largely the same as those owed to employees, with the exception of the obligations concerning wages paid to employees.</p>	
 Taiwan	<p>The main legal obligations include:</p> <ul style="list-style-type: none"> <li>• depending upon circumstances, taking necessary precautions to ensure the safety and health of the workplace (obligations under the relevant safety and health legislations and the duty of care under the Civil Code);</li> <li>• reporting cases where a person infected with a particular illness as required by the Communicable Disease Control Act; and</li> <li>• taking necessary preventive measures as may be required under specific instructions issued by the competent authority.</li> </ul>	<p>Where reasonably practicable, employers should make visitors to its offices aware of any health and safety hazards associated with entering the workplace prior to any intended visit.</p>






### Q3. What are my legal obligations to my customers and visitors attending my office? (cont'd)

Country	Legal Minimum	Best Practice
 Thailand	<p>At present, there is no specific regulation under Thai labour law granting the employer's rights to prevent the customers or visitors entering the office. However, Thailand has promulgated the Communicable Disease Act B.E. 2523 under which the health official in charge has the power to act or give a written order to the owner of premise to manage any necessary measurement for safety and sanitation in the workplace.</p>	<p>Employers may notify customers and visitors of the current status of a pandemic and may limit the restricted area in the workplace for customers and visitors.</p>
 Vietnam	<p>There is no specific provision on the employer's liabilities toward its customers in a pandemic, other than the following general duties:</p> <ul style="list-style-type: none"> <li>• to report cases where a person is infected with a particular illness as may be required by the State competent bodies; and</li> <li>• to take necessary preventive measures as may be required under specific instructions issued by the State competent bodies from time to time.</li> </ul>	<p>See the response in (Q2) above.</p>

#### Q4. What insurance am I required to take out?

Country	Legal Minimum	Best Practice
 Hong Kong	<p>The only insurance an employer is required to take out is the appropriate insurance under the ECO.</p>	<p>Employers may also wish to consider business interruption insurance (which covers an influenza pandemic), medical insurance and evacuation cover.</p>
 Australia	<p>As noted above, employers in Australia are required to take out and maintain workers' compensation insurance (subject to some exceptions where employers do not pay remuneration to "workers" above specified threshold amounts).</p> <p>Workers' compensation schemes provide employees with compensation for injuries (including diseases) which arise out of or in the course of employment.</p> <p>Most workers' compensation schemes are "no fault" schemes.</p>	<p>Employers should consider taking out business interruption insurance and / or additional personal injury insurance to cover employees ("workers") who are working overseas and may not be covered by workers' compensation insurance.</p>
 India	<p>The principles of occupier's liability are not clearly established under Indian law although in theory liability due to "wrongful acts" is a cause of action under the Civil Procedure Code and torts.</p> <p>The Factories Act, 1948 provides for State Government to appoint qualified medical practitioners as 'certifying surgeons' to examine and certify persons engaged in 'hazardous occupation', or where the substances used / manufactured includes likelihood of injury to the workers.</p> <p>In the absence of appropriate laws in India, social security laws like the Employees' State Insurance Act, 1948 may become applicable, since they provide for comprehensive medical care to the employees and their families as well as cash benefits during sickness and maternity and monthly payments in case of death or disablement. The employer is primarily liable for the payment of contributions on behalf of itself and its employees towards a Fund. In case of misuse of the contribution by the employer, the employee can sue the employer.</p>	<p>Employers should develop strategies that help manage a situation with all internal and external resources, useful in the event of a pandemic so as not to incur unnecessary expenses and to prevent disruption of work.</p> <p>Dangerous employment exposes employees and others to risk and high vulnerability to occupational diseases. There is need to preserve the good health of workmen by ensuring safe and healthy working conditions and to provide prompt compensation on account of injury or occupational disease.</p>

#### Q4. What insurance am I required to take out?

Country	Legal Minimum	Best Practice
 India	Employers may contractually provide for benefits like medical policy, reimbursement of medical expenses, hospitalisation etc for a certain amount in case of non workmen and managerial employees.	
 Indonesia	<p>The insurance you are required to take out as an employer is the appropriate insurance under:</p> <ul style="list-style-type: none"> <li>• Jamsostek; and</li> <li>• any other insurances agreed in contracts of employment, Company Regulation or Collective Labour Agreement.</li> </ul>	You may also wish to consider business interruption insurance.
 Malaysia	All employers and employees are required to make contributions to the fund established by the Employees' Social Security Act 1969 which provides for the payment for disability arising from accidents in the course of employment or while travelling to and from the place of work and occupational diseases. This fund provides social insurance. Apart from making these mandatory contributions, there is no requirement to take out any further insurance except in the case of foreign workers as foreign workers are not covered by the scope of this Act.	Employers may also wish to consider business interruption insurance (which covers an influenza pandemic), medical insurance and evacuation cover.
 New Zealand	<p>There are no legal requirements to insure against the effects of an influenza pandemic.</p> <p>It is not possible to insure against fines imposed for breaches of the Health and Safety Employment Act.</p>	Employers should consider business interruption insurance (and seek to ensure this covers an influenza pandemic), medical insurance, and evacuation cover.
 People's Republic of China	No mandatory insurance is required to be taken out for a pandemic.	Employers may wish to consider business interruption insurance (which covers an influenza pandemic), medical insurance and evacuation cover.

#### Q4. What insurance am I required to take out?

Country	Legal Minimum	Best Practice
 Singapore	No mandatory insurance is required to be taken out for a pandemic.	Employers may wish to consider business interruption insurance (which covers an influenza pandemic), medical insurance and evacuation cover.
 South Korea	Employers are not required to take out private insurance to cover risks of workplace accidents, illnesses, or injuries. Korean law does require, however, all employers to subscribe for workmen's compensation insurance under the Industrial Accident Compensation Insurance Act, and for employee health insurance under the Medical Insurance Act. These mandatory insurances have premiums based on wages, with employers and employees each being liable for payment of half the total premium payable for the employee.	In addition to compliance with statutory mandatory insurances, employers may consider provision of private health insurance coverage as a group insurance policy. Business interruption and expatriate evacuation coverage also seems to be a prudent measure.
 Taiwan	Employers are required to obtain and maintain National Health Insurance and Labour Insurance for their employees.  Apart from the mandatory insurance as stated above, there are no specific legal requirements to insure against the effects of an influenza pandemic.	Employers should also consider business interruption insurance (and seek to ensure this covers an influenza pandemic).
 Thailand	There are no legal requirements to take out any particular insurance.	Employers may wish to consider business interruption insurance, Medical insurance, and Evacuation cover.
 Vietnam	Employers are required to make contributions to the Social Security Fund and health care scheme as required by the labour laws.	Employers may also wish to consider illness-related insurance.



## Part B

# Practical considerations

## Hong Kong



### 1. What should a Workplace Influenza Pandemic Response Plan cover?

The Plan should deal with the following:

#### Before a pandemic

- Preventive measures such as flu shots.
- Regular disinfection of workplace.
- Making sure that employees, suppliers and customers are aware of the employer's plans in the event of a pandemic.
- Ensuring sufficient supplies of appropriate masks, alcohol wipes, gloves, paper towels, thermometers, disinfectants, etc.

#### During a pandemic

- The steps that the employer will take to ensure the safety of employees while at work including how an employer will identify risks of employees becoming infected and how to minimise such risks.
- Communication strategies such as how information will be communicated to employees, suppliers and customers.
- Where employees will work, e.g. home, in the office or in alternative temporary offices.
- At what stage will the workplace be closed and who will make the decision.
- How to deal with deaths of colleagues, e.g. counselling.
- A mechanism for determining whether employees, suppliers and customers will be allowed access to the workplace, especially if they show signs of illness.
- What to do with high risk staff (e.g. pregnant employees, asthma sufferers or those with respiratory problems, elderly) and key employees and employees who travel?

#### After a pandemic

- Ways to ensure that employees and customers have fully recovered before they are allowed back into the workplace.
- Rehabilitation for sick employees returning to the workplace or assistance to employees who have died as a result of the pandemic.

## 2. Can I direct my employees to go home or stay at home in a pandemic?

If an employer reasonably suspects that an employee is either (1) ill with the pandemic illness and is contagious or (2) that if the employee enters the workplace he will be exposed to risks to his health and safety, then the employer may be able to direct the employee not to attend at the workplace. This is provided the employer continues to comply with its obligations under the contract of employment (e.g. to pay wages).

## 3. Can I direct an employee to see a doctor?

Requesting an employee to see a doctor is invasive and an employer would therefore generally require an express power in the contract of employment in order to direct an employee to see a doctor. Depending upon the circumstances, an employer may require an employee to obtain a clearance from a doctor before being allowed to enter into the workplace.

## 4. Do I have to continue to pay wages and provide other employment related entitlements during a pandemic?

Yes. The contract of employment will continue during a pandemic unless it is terminated. An employer cannot refuse to pay wages simply because the employee is unable to attend the workplace or perform any work because of the pandemic.

An employer may terminate an employee's employment in accordance with the contract of employment (e.g. giving notice or making a payment of wages in lieu). Depending on the circumstances, this termination may amount to a redundancy in which case the employer may be liable for statutory severance pay.

However, employers may wish to explore other alternatives before taking the drastic step of terminating employment. Such alternatives include:

- exhausting annual leave before asking employees to take unpaid leave;
- asking employees to take advance annual leave;
- asking employees to agree to a salary reduction;
- agreeing with employees to change the nature of employment to part time employment or to a job sharing arrangement (e.g. working alternative days);
- agreeing with employees to change their mode of remuneration to, say, on an hourly or results based basis; and
- unilateral reduction of salary, however, the contract of employment must provide for this and the exercise of this discretion by the employer must be rational.

In an extreme case, if the pandemic lasts for an extended period, the contract of employment may be "frustrated", in which case the contract of employment is terminated because it is impossible to perform. It is typically difficult to show frustration of a contract so it is highly recommended that employers seek legal advice before attempting to argue that a contract of employment has been frustrated.

**5. Can I quarantine certain staff to certain parts of an office or send them to a different office?**

An employer is entitled to ask an employee to work from a particular part of an office if it is to ensure his (and / or other's) health and safety.

As to whether an employer can send an employee to work in a different office, that would depend on the circumstances including the contract of employment (e.g. whether it provides that the employee is entitled to work at a particular location), the extent of the travel required and inconvenience suffered by changing the work location. For example, it may not be reasonable to change an employee's workplace from Hong Kong to a place overseas when the employee does not usually travel as part of his duties. However, changing the employee's workplace from, say, Central to Causeway Bay may be reasonable.

**6. Can I direct my employees to report suspected cases of "influenza" illnesses?**

In the event of an influenza pandemic, such a direction would be a lawful and reasonable direction to an employee.

**7. Can an employee lawfully refuse to attend work if there is a pandemic?**

An employee can only lawfully refuse to attend work if he reasonably fears for his health and safety by doing so. Section 10 of the Employment Ordinance entitles an employee to terminate his contract of employment without notice or payment in lieu if he reasonably fears physical danger by violence or disease such as was not contemplated by his contract of employment expressly or by necessary implication. If an employer requires an employee to attend work in these circumstances, it is likely to be in breach of the OHSO.

**8. Can I screen employees and customers before allowing them to enter the workplace?**

Depending upon the extent of the pandemic, the screening of employees and customers may be a reasonable step for an employer to take to reduce the risk of its employees being exposed to harm. However, depending upon technological and medical testing limitations, there may be logistical and privacy issues with undertaking any such screening in a timely and effective manner before gaining entry to the building. One step that may be reasonably practicable is for employers to take temperature readings of employees and customers.

## 9 Can I stop a customer from entering the workplace if I suspect him of being ill?

The Disability Discrimination Ordinance prohibits discrimination against a person with a disability in the provision of goods, services or facilities. There is an exception if the disability is an infectious disease (which includes the H5 influenza virus) and the discriminatory act is reasonably necessary to protect public health. So, if a customer is infected with the H5 virus and there is the risk of the customer exposing the employer's employees to harm the employer may refuse entry to that person.



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## Australia



### 1. What should a Workplace Influenza Pandemic Response Plan cover?

The key is to prepare well prior to any outbreak as many strategies take time to set up. A Plan should include reviewing any business continuity plans, policies and procedures which may be relevant, such as policies dealing with infectious diseases, health monitoring, flexible working arrangements (working from home) and occupational health and safety. It should also include establishing relationships with medical practitioners, counsellors, risk management consultants and providers of equipment such as masks, gloves, alcohol wipes, paper towels, disinfectants, etc.

A Plan should address measures to minimise risks to the health, safety and welfare of employees, contractors and visitors in relation to a workplace influenza pandemic. The Plan should be based on a comprehensive assessment of risks to employees, contractors and visitors in respect of a pandemic. The Plan should include steps for all stages of a pandemic – before, during and after.

#### Before a pandemic

A Plan should outline preventative measures such as:

- making immunisation available to all employees, at a reduced rate or at no cost;
- restricting or preventing non-essential staff business travel to countries identified as high risk;
- requesting staff to limit private travel to countries identified as high risk;
- detailing guidelines for employees who must travel to high risk areas. These would include:
  - avoiding areas where there are live animals, such as markets or farms
  - avoiding any areas that may have been infected with animal droppings, such as water catchments, etc
  - avoiding uncooked food as much as possible and ensuring hygienic handling of all food when this is not possible
  - ensuring all food is well cooked prior to consuming
- detailing the steps to be taken if a person suspects that they have had contact with avian flu or they develop flu like symptoms. These steps may include:
  - not returning to a workplace (or site) until a doctor has been consulted and the person is declared “fit for work”
  - avoiding contact with other persons as much as possible so as to avoid the spread of any infectious disease
  - reporting information to relevant government departments or agencies which have official functions during an avian flu outbreak



- detailing a communication strategy for employees, contractors, suppliers and customers (consider testing the capacity of the communication strategy / staffing for extended communication demands).

### During a Pandemic

A Plan should outline the steps the employer will take to ensure the safety of employees, contractors and visitors, including:

- alternate working arrangements where possible – such as working from home;
- processes for assessing risks faced by employees, suppliers and customers on a day to day basis;
- communication and training plans (such as workshops for staff);
- a feedback loop where staff and customers can ask questions and answers can be published (to address rumours proactively and correct misinformation). This could be a link on an internet or intranet site and / or a lotus notes database;
- contact details for designated contact person(s); and
- contact details for medical practitioners, counsellors and other relevant service providers.

### After a pandemic

A Plan should outline a process for:

- allowing staff back to the workplace;
- assessing when staff or contractors who deal with customers should reduce or stop using risk management measures, such as masks etc; and
- rehabilitating staff and providing reasonable support and assistance to allow them to return to work.

## 2. What legal obligations do I have to my employees?

### Occupational Health and Safety Legislation

Employers must ensure, so far as is reasonably practicable, that employees and contractors are not exposed to risks to health, safety and welfare while they are at work. Employers must, so far as is reasonably practicable, provide and maintain safe “working environments” and workplaces for employees and contractors. These obligations include providing employees with appropriate facilities for their welfare and providing such information, instruction, training and supervision as is necessary to ensure they can safely perform their work. In the event of a pandemic, occupational health and safety obligations would include arranging health tests for employees (particularly if they are in customer facing roles), ensuring that designated persons can answer queries relating to the pandemic, providing clear and comprehensive information to employees and contractors, providing training and instruction on ways to minimise risks, and complying with advice provided by government agencies and other relevant bodies.

### Common Law Duty of Care

Under the common law employers have non-delegable obligations in relation to the safety of premises and systems of work. Employees can claim damages in respect of an employer's negligence in certain circumstances if employers breach their common law obligations. Employers must eliminate or minimise reasonably foreseeable risks to employees, contractors, suppliers and customers.

#### 3. Can I direct my employees to go home or stay at home in a pandemic?

There is no legislation in Australia which prohibits an employer from directing employees to stay home in the circumstances of a pandemic. It may be necessary for an employer to direct employees to stay at home in a pandemic, to comply with obligations under occupational health and safety legislation. In the circumstances of a pandemic, this is likely to be a lawful and reasonable direction.

#### 4. Do I have to continue to pay wages and provide other employment related entitlements during a pandemic?

Employees are entitled to use accrued sick leave in respect of absences from work during a pandemic. An employer must continue to pay wages until employees' leave entitlements are exhausted. An employer can direct employees to take any accrued but untaken annual leave (subject to specific notice requirements). Once employees' entitlements are exhausted there is no requirement at common law for an employer to continue to pay the employees where they are absent from work.

Terms and conditions of employment in Australia are also regulated by legislation, awards, collective agreements and contracts of employment which may change the common law position. An employer may be required to pay employees during periods when employees are not working (and have exhausted their sick and annual leave entitlements). Employers should check relevant awards or agreements (where applicable) to ascertain their obligations in respect of payment of wages and other entitlements.

#### 5. Can I quarantine certain staff to certain parts of an office or send them to a different office?

In Australia, the Governor General has powers under the *Quarantine Act* (1908) (Cth) to isolate people in the event of a pandemic. A direction by an employer to quarantine employees in the circumstances of a pandemic is likely to be a lawful and reasonable direction (and a direction which is necessary to enable the employer to comply with its occupational health and safety obligations to employees and non-employees).

## 6. Can I direct my employees to report suspected cases of influenza illness?

Employees have obligations under occupational health and safety legislation to take reasonable care for their own health and safety and the health and safety of other people at the employee's place of work (and who may be affected by the employee's acts or omissions at work). It is clearly arguable that employees have obligations to report suspected cases of influenza at workplaces and that any direction from an employer to do so will be a lawful and reasonable direction. State and Commonwealth legislation imposes obligations on certain categories of people (for example, parents, teachers and owners of schools) to report infectious diseases. However, at this stage, there are no obligations imposed on employers or members of the public to report infectious diseases.

## 7. Can I screen employees and customers before allowing them to enter the workplace?

Subject to compliance with relevant privacy legislation, an employer may require an employee to submit to a medical test or medical screening where the test and screening is necessary to satisfy the employer of the ability of the employee to work safely.

Screening and use of medical data collected from a screening is subject to privacy legislation at both State and Commonwealth level. The *Privacy Act* (1988) (Cth) places certain obligations upon the collection, use and disclosure of *personal information*. Personal information includes medical information about an employee. However, "employee records" are excluded from the operation of the *Privacy Act*. An employer must not use or disclose personal information relating to employees unless the purpose of the use or disclosure is directly related to employment.

In addition to the Commonwealth privacy legislation, some States have enacted specific legislation which regulates the collection, use and disclosure of "health records". Victoria has enacted the *Health Records Act, 2001* (VIC) and New South Wales has enacted the *Health Records & Information Privacy Act 2002* (NSW). Both regulate the collection, use and disclosure of health records by health service providers and any other organisation that collects, holds or uses "health information". Personal and health information can be disclosed to other persons (for example, government agencies) in some circumstances (when exceptions in legislations apply) when exceptions in privacy and health records legislation apply.

## 8. Can I stop a customer from entering the workplace if I suspect the customers of being ill?

Disability discrimination legislation makes it unlawful to discriminate against another person by refusing the person access to premises on the basis of a disability or disease suffered by the person. However, it is not unlawful to discriminate against a person who has an infectious disease and discrimination is necessary to protect public health.

It would be lawful to prevent a customer or other person from entering a workplace if there is evidence that the customer or other person poses a risk to employees or the public. As noted above, to comply with occupational health and safety legislation, employers must identify and assess hazards and risks associated with avian flu and implement measures to eliminate or minimise risks to employees, contractors, and other persons, so far as is reasonably practicable. Such measures may include preventing persons from entering workplaces.

## 9. Can I direct an employee to see a doctor?

In most cases, it is lawful to request an employee to attend a medical practitioner (and to obtain a medical report) to assess whether the employee is capable of safely performing his or her work duties (and whether any changes or limitations need to be imposed on the employee's work duties). If the employee refuses to attend a medical examination, the employer can direct the employee to attend the examination if the employer reasonably believes the examination is necessary to assess whether the employee can safely perform his or her work duties.

An employer could direct an employee to attend a medical examination if the employer reasonably believes that the employee has (or may have) been infected with avian flu (or has symptoms which may prevent the employee from safely performing his or her work duties). However, an employer could not direct an employee (or any other person) to accept or undergo any particular medical treatment. In Australia, any person can refuse consent for medical treatment (subject to legislation which allows medical practitioners to administer treatment without consent in some circumstances).



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## India



### 1. What should a Workplace Influenza Pandemic Response Plan cover?

#### Before a pandemic

Since a pandemic is bound to affect the nation's economy, sound contingency planning, communication with people at all levels and monitoring of trigger points in tune with WHO guidelines and local measures taken by government will be key to effective crisis management by employers in order to minimise loss and disruption and ensure business continuity. In India, lack of a pandemic history restricts clarity in policy making.

In such an eventuality, a policy / plan prior to any outbreak should be formulated and implemented as a preventive measure. The policy should:

- specify the total number of casual / at long term sickness leave and the circumstance in which they can be taken;
- set out benefits, monetary or otherwise, if any;
- identify restrictions to the availability of leave / benefits in lieu;
- create awareness to remove mass panic and sudden absenteeism; and
- set a clear delegation of roles and responsibilities that will allow an organisation to react expeditiously in an emergency situation.

In addition to the above a sound policy will cushion the financial impact of a sudden operational disruption like a pandemic.

#### During a Pandemic

In India, employers are not under a legal obligation to direct employees in the circumstances of a pandemic but must act reasonably and strictly comply with occupational health and safety obligations towards employees.

During the various stages of the pandemic outbreak, organisations with functional crisis management plans would be in a better position to mitigate risks and financial losses.

#### After a pandemic

Ensure that on return, each employee receives his benefits as per contract or under statute. In keeping with the interests of the other employees, a policy is important before terminating employment of such an employee. It is important to make sure that the procedure for compensation is not cumbersome otherwise damaged workers would not receive compensation.

Employees are entitled to use accrued sick leave in respect of absences from work during sickness / disability. These rights may be extended to a pandemic. An employer must continue to pay wages until employees' leave entitlements are exhausted. After the casual / sick leave is exhausted there is no requirement under law for an employer to continue to pay the employees where they are absent from work.

## 2. What legal obligations do I have to my employees?

Legislation like the Employees' State Insurance Act, 1948 provide for a list of scheduled "occupational diseases", and the benefits applicable to such illnesses.

The Employees' State Insurance Act, 1948 provides cash and medical benefits in addition to protection from dismissal, discharge or other punishments during a period of 6 months in case of a recipient of disablement benefit; a period of 6 months in case an employee who is under medical treatment for sickness or certified illness due to pregnancy or confinement; a period of 12 months in case an employee who is under medical treatment for T.B. Leprosy, Mental, Malignant or any of the other 34 specified diseases.

The Factories Act, 1948 requires employers to ensure cleanliness of the workplace; make effective arrangement for treatment and disposal of waste and effluent.

## 3. Do I have to pay wages and provide other employment related entitlements during a pandemic?

Terms and conditions of employment in India are regulated by legislation, agreements and contracts of employment. An employer may, in certain circumstances, be required to pay employees during periods when employees are not working (and have exhausted their sick and annual leave entitlements). In case of a pandemic continuing indefinitely, it may result in redundancies or even closure, in which case employees may be retrenched and compensation payable as per retrenchment and closure obligations of the Industrial Disputes Act, 1947.

## 4. Can I quarantine certain staff to certain parts of an office or send them to a different office?

No such power exists for an employer to direct his employees in such manner in circumstances of a pandemic.



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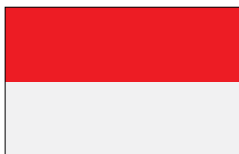
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## Indonesia



### 1. What should a Workplace Influenza Pandemic Response Plan cover?

A Plan should deal with both workplace health and safety issues and business continuity issues.

### 2. What legal responsibility do I have towards my employees?

You should provide your employees with the following at minimum:

- participating in the Jamsostek program for employees;
- covering the employee with any agreed private health insurance plan;
- complying with the provisions as agreed with the employees under their contract of employment, Company Regulation and Collective Labor Agreement and applicable labours laws which detail minimum employment standards; and
- comply with applicable rules for workplace health and safety.

### 3. Can I direct my employees to go home or stay at home in a pandemic?

An employer is entitled to direct employees to leave the workplace. However, healthy employees so instructed are entitled to full salary. There are no regulations specifically governing or permitting employers to direct their employees to go home or stay at home in a pandemic.

### 4. Do I have to continue to pay wages and provide other employment related entitlements during a pandemic?

Yes, you should pay wages and other employment entitlements to healthy employees during a pandemic. Under the Indonesian Labor Law, the salary to be paid to an employee who is ill shall be as follows:

- for the first period of 4 (four) months, 100% (one hundred percent) of salary;
- for the second period of 4 (four) months, 75% (seventy-five percent) of salary;
- for the third period of 4 (four) months, 50% (fifty percent) of salary; and
- thereafter, 25% (twenty-five percent) of salary shall be paid until the employer carries out employment termination.



**5. Can I quarantine certain staff to certain parts of an office or send them to a different office?**

There are no regulations governing or permitting employers to quarantine their staff to certain parts of an office or send them to a different office. Quarantine can be performed by hospitals appointed by the government specifically to handle epidemic diseases.

**6. Can I direct my employees to report suspected cases of “influenza” illnesses?**

Yes. Under health regulations regarding the Prevention of the Spread of Epidemic Diseases, the public should participate in epidemic eradication efforts by reporting the existence of those suspected of having an epidemic illness.

**7. Can I screen employees and customers before allowing them to enter the workplace?**

There are no regulations governing or permitting employers and businesses to screen employees and customers before allowing them to enter the workplace. However, this would appear to be a reasonable and prudent preventive measure included within the general right of an employer or business to control access to its premises.



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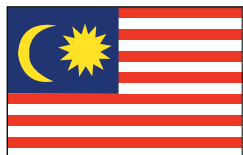
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## Malaysia



### 1. What should a Workplace Influenza Pandemic Response Plan cover?

The Plan should deal with the following:

#### Before a pandemic

- Preventive measures such as flu shots.
- Regular disinfection of workplace.
- Making sure that employees, suppliers and customers are aware of the employer's plans in the event of a pandemic.
- Ensuring sufficient supplies of appropriate masks, alcohol wipes, gloves, paper towels, thermometers, disinfectants, etc.

#### During a pandemic

- The steps that the employer will take to ensure the safety of employees while at work including how an employer will identify risks of employees becoming infected and how to minimise such risks.
- Communication strategies such as how information will be communicated to employees, suppliers and customers.
- Where employees will work, e.g. home, in the office or in alternative temporary offices.
- At what stage will the workplace be closed and who will make the decision.
- How to deal with deaths of colleagues, e.g. counselling.
- A mechanism for determining whether employees, suppliers and customers will be allowed access to the workplace, especially if they show signs of illness.
- What to do with high risk staff (e.g. pregnant employees, asthma sufferers or those with respiratory problems, elderly) and key employees and employees who travel?

#### After a pandemic

- Ways to ensure that employees and customers are fully recovered before they are allowed back into the workplace.
- Rehabilitation for sick employees returning to the workplace or assistance to employees who have died as a result of the pandemic.

## **2. Can I direct my employees to go home or stay at home in a pandemic?**

If an employer reasonably suspects that an employee is either (1) ill with the pandemic illness and is contagious or (2) that if the employee enters the workplace he will be exposed to risks to his health and safety, then the employer may be able to direct the employee not to attend at the workplace. This is provided the employer continues to comply with its obligations under the contract of employment (e.g. to pay wages).

## **3. Can I direct an employee to see a doctor?**

There are no legal impediments to an employer requiring an employee to be medically examined if illness is suspected.

## **4. Do I have to continue to pay wages and provide other employment related entitlements during a pandemic?**

Yes. The contract of employment will continue during a pandemic unless it is terminated. An employer cannot refuse to pay wages simply because the employee is unable to attend the workplace or perform any work because of the pandemic.

A pandemic may continue indefinitely and depending on the circumstances, this may result in redundancies or even closure. In such case, redundancy benefits may become payable by operation of law or by virtue of express contractual provisions. The Code of Conduct for Industrial Harmony prescribes that employers explore other alternatives before taking the drastic step of terminating employment. Such alternatives may include:

- exhausting annual leave before asking employees to take unpaid leave;
- asking employees to take advance annual leave;
- asking employees to agree to a salary reduction; and
- agreeing with employees to change the nature of employment to part time employment or to a job sharing arrangement (e.g. working alternative days).

In an extreme case, if the pandemic lasts for an extended period, the contract of employment may be “frustrated”, in which case the contract of employment is terminated because it is impossible to perform. It is typically difficult to show frustration of a contract so it is highly recommended that employers seek legal advice before attempting to argue that a contract of employment has been frustrated.

## **5. Can I quarantine certain staff to certain parts of an office or send them to a different office?**

An employer is entitled to ask an employee to work from a particular part of an office if it is to ensure his (and / or other's) health and safety. Transfer is a common express term of most contracts of employment and even if it is not, transfer has long been regarded an implied term of employment.

**6. Can I direct my employees to report suspected cases of “influenza” illnesses?**

In the event of an influenza pandemic, such a direction would be a lawful and reasonable direction to an employee.

**7. Can an employee lawfully refuse to attend work if there is a pandemic?**

An employee can only lawfully refuse to attend work if he reasonably fears for his health and safety by doing so. Section 14(3) of the Employment Act 1955 entitles an employee to terminate his contract of employment without notice or payment in lieu if he or his dependants are immediately threatened by danger to the person by violence or disease such as such employee did not by his contract of service undertake to run.

**8. Can I screen employees and customers before allowing them to enter the workplace?**

Depending upon the extent of the pandemic, the screening of employees and customers may be a reasonable step for an employer to take to reduce the risk of its employees being exposed to harm. However, depending upon technological and medical testing limitations, there may be logistical and privacy issues with undertaking any such screening in a timely and effective manner before gaining entry to the building.

**9. Can I stop a customer from entering the workplace if I suspect him of being ill?**

There are no legal impediments to refusing entry to a customer if an employer reasonably suspects a customer is infected and that there is the risk of the customer exposing its employees to harm.



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## New Zealand



### 1. What should a Workplace Influenza Pandemic Response Plan cover?

- The steps that an employer should take to ensure the safety of employees while at work, including the steps that an employer should take to identify risks of employees becoming infected and minimise any such risks.
- The potential impacts on an employer's business should staff become infected and / or it be required to partially or fully close its operation, and for what periods.
- The need to discuss the possibility of workplace closure with employees, including identifying whether services can be delivered at alternative locations or from home and methods of such closure.
- Identifying what parts of an employer's operation (if any) may remain in operation during a pandemic.
- The process for arranging with those staff who are not able to work from alternative locations or from home for extended periods whether there are alternative measures that can be implemented. Ultimately, an employer may need to consider more severe measures (including termination of employment for frustration of contract or redundancy) such as taking leave or reducing salaries for a long term pandemic.

### 2. What legal responsibility do I have towards my employees?

The areas of legal responsibility include:

- ensuring so far as reasonably practicable the workplace health and safety of employees (obligations under the Health and Safety Employment Act and common law duty of care);
- allowing an employee to refuse to do any work where there are reasonable grounds to believe that serious harm will be caused to the employee in doing so;
- complying with all obligations under employees' employment agreements;
- complying with obligations to employers under the Employment Relations Act 2000 and the common law, including acting in good faith, not unilaterally amending terms of employment, and ensuring fair consultation is undertaken prior to taking any action which may impact on employees in their employment;
- complying with obligations to employers under the Holidays Act, including paying employees sick leave for any period they (or their dependants) are sick, allowing employees to utilise accrued annual leave if their sick leave has been exhausted, and giving employees 14 days notice to take accrued annual leave if no agreement can be reached on when this is to be taken; and
- complying with obligations to employers under the Wages Protection Act, including not reducing or ceasing an employee's pay without their agreement.

### 3. Can I direct my employees to go home or stay at home in a pandemic?

If an employer reasonably determines that an employee's presence in the workplace may expose them (or others) to harm, the employer would have a duty to require the employee to remain away from the workplace. If there is insufficient work to provide to employees, then as above, an employer may need to consider more severe measures (including termination of employment for frustration of contract or redundancy) such as taking leave or reducing salaries for a long term pandemic.

### 4. Do I have to continue to pay wages and provide other employment related entitlements during a pandemic?

As a general rule, an employer may not unilaterally cease paying wages to employees, remove benefits or suspend them without pay for the duration of any pandemic, even if this means that an employer is unable to operate normally and / or provide work to an employee.

If employees are not able to attend the workplace as a result of a pandemic, but are not personally affected and able to work, there would be no impact on the employer's obligations to pay employees if alternative arrangements can be made with employees that they work at alternative locations or from home.

If no such alternative arrangements to work remotely can be made, unless the more severe measures of termination of employment for frustration of contract or redundancy are pursued (for a long term pandemic) or unless there are specific contractual provisions in employees' employment agreements providing that employees agree for their salary / wages / benefits to be withheld during any period the employer is not able to provide work, or the parties agree to do so, the employer must continue to pay all employees their standard wages / salary, even if the business is temporarily partially or fully closed.

If an employee is actually sick and unable to work, then they would be entitled to utilise any accrued sick leave and then annual leave (if available) after the sick leave entitlement has been exhausted.

However, if a pandemic resulted in significant long term changes to the nature of the employer's business and capabilities, and the nature of the employment agreements, then an employer may potentially terminate employment agreements on the grounds of frustration, or declare various positions redundant (following the appropriate consultation processes) on the basis that there simply is no ongoing work to provide the employees. These options would not be available if a pandemic lasts for a relatively short period with manageable consequences.

**5. Can I quarantine certain staff to certain parts of an office or send them to a different office?**

Pursuant to an employer's obligations under the Health and Safety Employment Act, provided that requiring staff to work from certain parts of the office or from a different location was necessary to ensure the safety of employees while at work, then these courses of action may be permissible (and may be required). In such circumstances, an employer would need to ensure it had taken all reasonably practicable steps to ensure the place where employees were required to work was safe.

**6. Can I direct my employees to report suspected cases of "influenza" illnesses?**

The Health and Safety Employment Act requires all employees to take all practicable steps to ensure both their own safety and that of any other person while at work. Therefore, it would be reasonable for an employer to require its employees to report suspected cases of influenza as a means of reducing the risk of other employees becoming infected.

**7. Can I screen employees and customers before allowing them to enter the workplace?**

Depending upon the extent of the pandemic, the screening of employees and customers may be a reasonable step for an employer to take to reduce the risk of its employees being exposed to harm. However, depending upon technological and medical testing limitations, there may be logistical and privacy issues with undertaking any such screening in a timely and effective manner before gaining entry to the building.

**8. Can I stop a customer from entering the workplace if I suspect him of being ill?**

If an employer reasonably suspects a customer is infected and that there is the risk of the customer exposing its employees to harm, the Health and Safety Employment Act would allow an employer to refuse entry to that person.



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## People's Republic of China



### 1. What should a Workplace Influenza Pandemic Response Plan cover?

There are no specific regulations in the PRC Law mandating the preparation of a Workplace Influenza Pandemic Response Plan or the contents thereof.

According to Art. 20 of *the Implementation Measures of the PRC Law on the Prevention and Cure of Infectious Diseases*, an entity which employs more than 200 non-locals (meaning persons living in a particular city without registered permanent residence in such city) as employees must report to the sanitation and antiepidemic organization appointed by the local health administration departments, and take sanitary measures to prevent and control the infectious disease as required. There are no provisions on the details of the sanitary measures required to be taken. We believe the plan, if the employer desires to make one, should deal with both workplace health and safety issues and business continuity issues. The workplace health and safety issues, may include working time adjustment, the distribution of medicine and other protective steps. The business continuity issues may include the establishment of the client / guest inspection systems, the establishment of a system to guarantee that necessary work will be carried out and other arrangements.

Although the above article obligates employers to report and take sanitary measures, some local regulations stipulate different measures in respect of the same. For instance, under *the Shanghai Interim Administrative Rules on Epidemic Prevention for Non-local Population*, an entity which employs more than 100 non-locals as employees shall report to the sanitation and antiepidemic station located in the location of such entity. Such report shall include the number of non-locals employed, the source and the state of health of such non-locals, and the measures on sanitation and epidemic prevention.

## 2. What legal responsibility do I have towards my employees?

Under Art. 49 of the *Implementation Measures of the PRC Law on the Prevention and Cure of Infectious Diseases*, the salary of the quarantined people during the period of quarantine, who are suspected of being infected with a Grade A infectious disease, shall be paid by the employer as if they had worked on the condition that they are subsequently found out to be not infected.

According to Art. 4 of the *PRC Law on the Prevention and Cure of Infectious Diseases*, the bird influenza shall be dealt with as a Grade A infectious disease.

For the people who are actually infected bird influenza, the period of quarantine and cure shall be treated as a “Medical Period”, the salary for which shall be paid by the employer, based on the work years and the length of the quarantine and recovery period of the employee.

In the SARS pandemic period, there were certain temporary Notices or similar governmental documents issued by the authorities to stabilize the society, especially the employment relationship, which provided that the employer shall not terminate the employment agreements with the SARS infected employees or suspected SARS infected employees when they are quarantined. In a notice issued by the National Labour Department, there was a provision which provided that the quarantine term shall not be counted within the “Medical Period” that the employee has according to law.

From the SARS related documents mentioned above, there will probably be, in due course, special documents of the government that impose more obligations on the employer.

## 3. Can I direct my employees to go home or stay at home in a pandemic?

We are not aware of any prohibitions on this and do not view this as a problem as long as wages continue to be paid.

#### 4. Do I have to continue to pay wages and provide other employment related entitlements during a pandemic?

The employer shall pay the employees salaries pursuant to the employment agreements and the relevant laws and regulations. Under Art. 12 of the **Temporary Regulations of Salary Payment**, the employer shall pay the employees according to the employment agreement in a salary payment period, if the work stoppage or production cessation is not caused by the employees. If such work stoppage or production cessation exceeds one period (usually one month), the employer shall pay for the period of stoppage or cessation a salary not below the lowest local wage standard if the employees supply normal labour. If the employees do not supply normal labour, the employer shall pay the salary according to relevant state regulations.

We understand that some employment related entitlements such as food allowance and transport allowance may not be provided since they are paid on the basis that the employees actually work. As for social insurance, we understand that as long as the employment relationship exists, the social insurance contributions shall continue to be paid by the employer.

#### 5. Can I quarantine certain staff to certain parts of an office or send them to a different office?

According to the provisions of **the PRC Law on the Prevention and Cure of Infectious Diseases**, only medical organizations and the people's government of County level or above may take measures to quarantine patients or suspected patients.

Other than the measures to quarantine patients or suspected patients, according to Art. 31 of **the PRC Law on the Prevention and Cure of Infectious Diseases**, any entity or person shall report to the organizations of prevention and control of disease or medical organisations, when it finds people infected or suspected to be infected by an infectious disease.

#### 6. Can I direct my employees to report suspected cases of "influenza" illnesses?

Under Art. 31 of **the PRC Law on the Prevention and Cure of Infectious Diseases**, any entity or person shall report to the organizations of prevention and control of disease or medical organizations nearby, when it finds people infected or suspected to be infected with an infectious disease. We therefore conclude that there will be no prohibition of such direction.

**7. Can I screen employees and customers before allowing them to enter the workplace?**

The right is not regulated in relevant law and regulations, although such right was popularly practised during the SARS episode. In the absence of any guidance, it will appear to depend on the nature of the workplace. If the workplace is a public place, the adoption of inspection measures should be left to the government authorities. If the workplace is a private place, then the regulations issued by the company which owns the workplace would generally be acceptable, and the company may take inspection measures to screen employees and customers. Such measures may be seen as a right deriving from the obligation of reporting on the part of entity as mentioned in Item 6 above. Needless to say, the measures should be reasonable and should not violate the privacy, modesty and other related rights of the persons involved.

**8. Can I stop a customer from entering the workplace if I suspect him of being ill?**

Again, such right has not been regulated in relevant laws and regulations.

However, we consider this depends on the place the customer wants to enter. If the place is a public place, such as supermarkets, entertainment places, the prudent way to act would be to report immediately to the organizations of prevention and control of disease or medical organizations nearby. Where it is a work place, like offices or plants, we consider that the company should have the right to stop the customer from entering the premises.



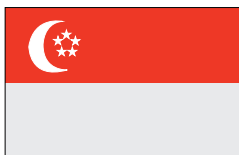
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## Singapore



### 1. What should a Workplace Influenza Pandemic Readiness and Response Plan cover?

The Plan should cover the following:

- information dissemination strategies on the nature and symptoms of the disease, and mode of transmission in so far as the employees, visitors and clients are concerned;
- monitoring system and temperature checks for staff and visitors;
- environmental cleanliness and hygiene;
- provision of sufficient personal protective equipment and education on the proper use of the same;
- procedures for staff with travel history;
- management of symptomatic employees;
- increase in social distance between and among employees and visitors; and
- contact tracing.

### 2. How can an employer ensure that its employees are properly informed of the nature and symptoms of the disease to avert its potential spread in the workplace?

An employer should disseminate to its staff information and material on disease characteristics. It should monitor media / Ministry of Health ('MOH') website for situation updates and health advisories. It is suggested that the employer conduct regular internal meetings among its employees to update them of recent developments on the pandemic.

### 3. How can an employer effectively monitor the temperature of its staff?

The employer must implement regular temperature checks and monitor staff for symptoms of influenza. Organisations may need to provide staff with thermometers for the individual checks and may require supervisor to verify the temperature of the staff if needed. Staff who is unwell with symptoms of influenza pandemic should be directed to seek medical help.

#### 4. Does an employer have to check and record the temperature of its visitors?

Yes. The employer must record information of all its visitors<sup>3</sup>, including date and time of visit, name of visitor, IC number, telephone number and the location / meeting room he / she will be going to for contact tracing purpose. The temperatures of all visitors should be checked. Anyone with a fever or with symptoms of influenza should not be allowed into the office or facility.

Visitors should also be asked to answer the following in the office or facility declaration form:

- Do you have a fever of more than or equal to 38°C and / or other symptoms such as cough, malaise, chills, headache, myalgia and the like?
- Have you been in contact or near anyone who is now suspected to have or has influenza?
- Have you been to any influenza-affected countries in the last 14 days?

Visitors who answer 'yes' to any of the above questions should be advised to seek medical assessment.

#### 5. What should staff carrying out temperature screening to visitors do to prevent possible transmission of the virus that causes influenza?

Staff carrying out the temperature screening of visitors should don N95 masks, disposable gowns and disposable gloves. They should disinfect thermometers between use or use disposable ear thermometer covers.

#### 6. How does an employer maintain environmental cleanliness?

Organisations should maintain environmental cleanliness to minimise transmission of the virus through environmental surfaces. The employer may consider the following guidelines:

- Cleaning of Work Area
  - clean all office space and common facilities daily
  - clean all surfaces, frequently touched surfaces and floors daily with a disinfectant, e.g. sodium hypochlorite 1% (1000 ppm)
  - use alcohol (e.g. isopropyl 70%, ethyl 60%) to wipe surfaces where use of bleach is not suitable

<sup>3</sup> It also applies to contractors, suppliers and others.

- Cleaning Crews
  - disinfect cleaning equipment used in one room before using for other rooms
  - disinfect buckets with fresh disinfectant solution or rinse in hot water before filling
  - rinse wiping clothes / mop in disinfectant several times or rinse thoroughly in hot water
  - discard gloves if they become soiled or damaged
  - cleaning crews should report to their occupational health service if they develop symptoms of influenza
  - cleaning personnel should wear disposable gloves while cleaning the area
  - cleaning crews should wash hands after carrying out cleaning / disinfection to minimise risk of transmission
- Cleaning and disinfection of areas exposed to case
  - seal, where possible, the areas where the person suspected of influenza has been and arrange for immediate cleaning and disinfection
  - cleaning crews should wear disposable gloves, disposable gowns and an N95 mask
  - avoid using the area exposed to case for the following morning or afternoon sessions

## 7. How can an employer ensure sufficient supply of personal protective equipment ('PPE') and critical items?

The employer must determine the type and quantity of items it will need, taking into consideration the number of its employees and the severity of the potential pandemic. Moreover, it must ensure supply of critical items that may be hard to get during a pandemic, including masks and disinfectants. If not possible, the employer should consider stockpiling the critical items.

## 8. Are there guides on the use of PPE such as N95 masks, disposable gloves and gowns?

Yes. The following guides on the use of PPE should be observed.

- When using masks:
  - masks are effective if worn according to instructions and properly fitted. Users of N95 masks need to undergo a mask fit test to ensure proper fit
  - repeated adjusting of mask while wearing can be a cause of infection due to contamination of hands with droplets gathered on the mask
  - mask should be discarded and changed if it becomes physically damaged
  - users should be monitored for dizziness, difficulty in breathing and skin irritation
  - the mask should be disposed of as with other biohazard wastes
  - the person should wash his hands with soap after disposing the mask
  - avoid touching the nose and eyes which can be routes of infection
- Discard all disposable items in a bag securely sealed and labelled.
- Hands should be washed with soap and water or alcohol-based hand sanitizers immediately after gloves are removed.



**9. Can an employer direct an employee not to report for work if he or she has travelled to a country that has been affected by the disease?**

Yes. The employee may be advised not to report for work or go on voluntary home quarantine for one incubation period / five days, or as advised by the MOH.

During the employee's absence from work, the employer is advised to check on the former's health status by phone to facilitate treatment if the staff becomes symptomatic.

**10. What measures should an employer take when he observes or receives a report of an employee with symptoms suggestive of influenza?**

In the event supervisors or work managers observe or receive a report of an employee who is unwell in the workplace with symptoms suggestive of pandemic influenza, the unwell person should be:

- isolated and moved to a room or area away from other people;
- advised to use only the toilet facility designated for him or her, if possible;
- provided with a surgical mask to wear in order to reduce the amount of droplets coughed into the air. Masks should be changed if they become wet, hard to breathe in, physically damaged or visibly soiled; and
- advised to cover his / her mouth and nose with tissues when coughing or sneezing if a surgical mask is not available.

The employer should keep the number of staff attending the ill person to a minimum. Staff attending to the ill person should wear N95 masks and disposable gloves.

Additionally, the employer should request from the MOH a dedicated ambulance transport to bring the ill employee to the designated Flu Clinic for assessment.

For monitoring purposes and probable contact tracing, the employer should take down the names and contact details (IC number, address, telephone number) of all persons who have come into contact with the employee when he / she was symptomatic.

## 11. Can the employer direct employees to increase the social space between and among them?

To minimise transmission of the disease, the employer can reasonably increase the social distance between and among the employees and even visitors. It may opt to:

- divide staff into work teams. Where office workflow permits, organisations can consider dividing their staff into work teams. Each team should, where possible, avoid contact with the other teams;
- allow working from home. Similarly, organisations can consider the feasibility of telecommuting and allow their staff to work from home;
- introduce staggered lunch hour to reduce crowding of staff cafeterias;
- use systems where customers / clients can pre-order / request information via phone, mail or fax so requested items will be ready for fast pickup or delivery; and
- device means to avoid meeting people face to face during conferences and discussions. However, if personal meeting with people is necessary, the employer must advise staff to maintain a distance of at least 1 metre (or as advised by MOH) from visitors / colleagues. Whenever possible, organisations are advised to choose a larger venue or meeting room to maintain the stated distance.

## 12. What is the employer's role in contact tracing?

The employer will create a Contact Tracing Team which is composed ideally of 1 team leader and 6 officers depending on the number of employees. Contact tracing will be activated by the organisation's Emergency Management Centre upon confirmation from MOH Contact Tracing Centre of a confirmed or suspected case of novel virus infection in humans / influenza pandemic. The contact tracing procedures must be consistent with MOH's guide to institution contact tracing.



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## South Korea



### 1. What should a Workplace Influenza Pandemic Response Plan cover?

In principle, the matters proposed for the Plan in the other jurisdictions covered in this Guide are sensible for the Korean environment and it is recommended the multinational employer's regional Plan be adopted for its Korean business.

For reference, the employer's health and safety officer is required under ISHA to prepare a "harm and danger prevention plan" which at minimum includes the following statutorily-prescribed elements:

- establishment of the harm and danger prevention plan and its officers, and administrative procedures for implementation and amendment of the plan and its components;
- safety and health education for employees;
- measures for inspection and improvement of the workplace environmental conditions (e.g. ventilation, heating and cooling, lighting);
- health-management measures, including medical-examination regulations and procedures;
- measures to investigate, identify and remediate workplace safety and health hazards;
- collection and maintenance of statistics on workplace safety and health; and
- evaluation of efficacy and compliance of workplace safety - and health-protective gear.

### 2. Can I direct my employees to go home or stay at home in a pandemic?

Yes. "Shutdown allowance" of 70% of wages (which may be covered by workmen's compensation insurance in some cases) shall be payable where the employer has directed employees to stay home for fear of disease spreading, or where an employee is on medical leave recuperating from an occupational illness or injury; provided, however, that where the period of medical leave is three days or less no payment shall be owed. This shutdown allowance obligation may be suspended with the approval of the Ministry of Labour.

### 3. Can I direct an employee to see a doctor?

Yes. Employers are required to establish systems to monitor employee safety and health, including the provision of medical checkups on at least an annual basis. Based on employer reports of suspected pandemic illnesses (see question 6 below), the Minister of Labour is empowered to conduct workplace epidemiological inspections to find the origin of workplace-based illnesses.

**4. Do I have to continue to pay wages and provide other employment related entitlements during a pandemic?**

Yes. See answer to question 2 above.

**5. Can I quarantine certain staff to certain parts of an office or send them to a different office?**

Yes. Art. 5 of ISHA and Art. 30 of PCDA affirmatively requires the employer to prohibit or restrict the work of a certain employee or employees suspected of presenting a threat of contagion to co-workers or the public.

**6. Can I direct my employees to report suspected cases of “influenza” illnesses?**

Yes. Employers are legally obligated to make public-health reports of suspected cases of certain diseases to the Ministry of Health and Welfare under Art. 5 of PCDA. These are pandemic-type diseases such as cholera, typhoid fever, paratyphoid fever, and bacterial dysentery; however, influenza and the H5N1 avian influenza variant are not specifically included on the list.

In order to fulfill this obligation, employers need information. Therefore, although there is no express permission or prohibition on directing employees to report suspected cases of influenza, it is our legal opinion that employers may lawfully do so.

**7. Can an employee lawfully refuse to attend work if there is a pandemic?**

Yes. Where the employee has a reasonable fear of imminent danger to health at the workplace he or she is entitled to refuse to attend (ISHA Art. 26), and is protected from reprisals. In such cases the employee must report to the employer, without delay, of the fact of the employee's non-attendance as well as the reason for the employee's concern (i.e. report the danger to the employer, so that the employer may take appropriate measures in response to the danger).

However, during the period an employee refuses to attend for fear of danger to health, no salary or wages are owed by the employer.

**8. Can I screen employees and customers before allowing them to enter the workplace?**

Yes. Property owners have the right under the Civil Code to permit or restrict entry to anyone, based on the right and duty to attend to security and safety. In many commercial buildings throughout Korea, security guards already screen entrants for weapons and contraband such as recording devices. Depending on the then-current assessment of pandemic risk, screening employees and customers for health risks at entry to a workplace would be a prudent measure in satisfaction of the employer's obligation under ISHA and PCDA to protect employees and the public.

**9. Can I stop a customer from entering the workplace if I suspect him of being ill?**

Yes. See our answer to question 8 above.



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## Taiwan



### 1. What should a Workplace Influenza Pandemic Response Plan cover?

The Plan should deal with the following:

- influenza vaccination available to employees;
- provision of sufficient and accessible infection control supplies in all business locations;
- guidelines for employee absences during a pandemic due to factors such as personal illness, family member illness, community containment measures and quarantines, business closures, and public transportation closures;
- guidelines for employees to report infected diseases;
- guidelines for employee compensation and sick-leave absences unique to a pandemic;
- guidelines for flexible workplace and flexible work hours;
- guidelines for employees who have been exposed to pandemic influenza, are suspected to be ill, or become ill at the workplace;
- guidelines for restricting travel to affected geographic areas (including domestic and international location), evacuating employees working in or near an affected area when an outbreak begins, and guidance for employees returning from affected areas; and
- communication and information technology facilities as needed to support employee telecommuting and remote customer access.

### 2. Can I direct my employees to go home or stay at home in a pandemic?

There is no legislation specifically governing or prohibiting employers from directing their employees to go home or stay at home during a pandemic. Depending upon the circumstances, it may be necessary for an employer to instruct employees to go home or stay at home during a pandemic to comply with the obligations under the relevant laws and regulations (e.g. Communicable Disease Control Act) or instructions as may be issued by the competent authority.

### 3. Can I direct an employee to see a doctor?

If an employer reasonably suspects that an employee is ill with an infectious disease, it would be necessary for an employer to instruct the employee to be medically examined to comply with the relevant laws and regulations or instructions as may be issued by the competent authority.

**4. Do I have to continue to pay wages and provide other employment related entitlements during a pandemic?**

As long as the employment relationship exists, an employer must continue to pay wages and employment entitlements to the employees who are healthy and able to work pursuant to the employment agreements and the relevant laws and regulations.

If an employee is ill and unable to work, he / she is entitled to use accrued sick leave and accrued but untaken annual leave (if available) after the sick leave entitlement has been exhausted. In the event that the employee's leave entitlement has been exhausted and the employee has not recovered, the employee would be entitled to take a leave of absence without pay for a maximum period of one year.

**5. Can I quarantine certain staff to certain parts of an office or send them to a different office?**

It may be necessary for an employer to quarantine their employees to certain parts of an office or send them to a different office in the event of a pandemic to ensure their safety and health and to comply with the obligations under the relevant laws and regulations or instructions as may be issued by the competent authority during a pandemic.

**6. Can I direct my employees to report suspected cases of "influenza" illnesses?**

In the event of a pandemic, it would be reasonable for an employer to request employees to report suspected cases of influenza in order to prevent the spread of infectious diseases and reduce the possibility of the other co-workers from becoming infected.

**7. Can an employee lawfully refuse to attend work if there is a pandemic?**

An employee may terminate the employment agreement without giving advance notice to the employer where his / her employer, an agent of his / her employer or a fellow worker contracts a harmful, contagious disease and there is a possibility that such employee may contract this disease. However, if the employer has already discharged the agent concerned or has hospitalised or discharged the person suffering from such harmful, contagious disease, the employee may not terminate the employment agreement.



**8. Can I screen employees and customers before allowing them to enter the workplace?**

There are no specific legislations governing or prohibiting the screening of employees and customers of an employer during a pandemic. However, depending on the extent of the pandemic, it would be a reasonable step for an employer to screen its employees and customers before allowing them to enter the workplace to ensure the safety and health of the workplace.

**9. Can I stop a customer from entering the workplace if I suspect him of being ill?**

During a pandemic, if the employer reasonably suspects a customer of being ill with the pandemic illness and is contagious, it would be reasonable for an employer to refuse entry to a customer to ensure the safety and health of the workplace.



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## Thailand



### 1. What should a Workplace Influenza Pandemic Response Plan cover?

There are a number of measures that offices and workplaces can adopt to reduce the likelihood of transmission in the workplace. These include: promoting good personal hygiene habits, advising staff and visitors of the method of transmission and the steps that can be taken to prevent the spread of disease, screening the temperature of visitors and regular screening of staff, directing staff that are feeling unwell to seek medical attention, cleaning and disinfecting rooms and work areas more often, creating isolation rooms for visitors with a fever, and ensuring that a contact tracing system is established.

### 2. What legal responsibility do I have towards my employees?

There is no specified provision covering the situation of pandemics. Under the Thai Labour Protection Act B.E. 2541, any employer with 50 or more employees must have a welfare committee to provide advice or any guidelines relating to health and safety in the workplace.

However, under Chapter 8 “Safety Sanitation and Environment of Working” Section 103 the Minister has the power to issue ministerial regulations determining the standards for the employer’s implementation concerning safety, sanitation and environment of the workplace.

### 3. Can I direct my employees to go home or stay at home in a pandemic?

During a pandemic the management should issue an internal memo to all employees regarding the protective measures to avoid transmission.

### 4. Do I have to continue to pay wages and provide other employment related entitlements during a pandemic?

An employer must pay the fixed wage to the employee for the first 30 working days of his / her illness in any one year under Thai law. There might be other regulations been announced in a pandemic.

### 5. Can I quarantine certain staff to certain parts of an office or send them to a different office?

See the response in (3) above.

## 6. Can I direct my employees to report suspected cases of “influenza” illnesses?

Section 107 of the Thai Labour Protection Act B.E. 2541, states that:

“The employer shall arrange for the health examinations of the employees and shall submit the result thereof to the labour inspection official in accordance with the rules and methods prescribed in ministerial regulations.”

Even though there is no ministerial regulations have been announced under this section, to protect the safety of all employees in the work place, the employer should have the right to direct any employees to report suspected cases of the “influenza” illness.

## 7. Can I screen employees and customers before allowing them to enter the workplace?

The employer should inform employees and customers in advance of the protective measures for screening them before allowing them to enter the work place during an outbreak.

However, in case of emergency and with proper reason; the employer may be able to screen employees and customers before allowing them to enter the workplace without prior notice. Such action must not violate the personal rights or result in any wrongful act or tort.

## 8. Can I stop a customer from entering the workplace if I suspect him of being ill?

There are no specific regulations prohibiting an employer from stopping a customer from entering the workplace if the employer suspects him of being ill.



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## Vietnam



### 1. What should a Workplace Influenza Pandemic Response Plan cover?

As there is no legal requirement for a Plan, it is up to the employer to prepare such Plan. A Plan may be of great importance for employers operating in sensitive businesses. The Plan should deal with both workplace health and safety issues and business continuity issues and most importantly, focus on information dissemination and improvement of knowledge of employees on the pandemic.

### 2. What legal responsibility do I have towards my employees?

As there is no specific legislation on the employer's liabilities in a pandemic, the main liabilities which could arise will be under the general laws. These include:

- ensuring so far as reasonably practicable the workplace health and safety of employees (general obligations under the labour laws and common law duty of care);
- complying with obligations under the contract of employment and the labour laws (e.g. continuing to pay wages unless the employees are entitled to illness allowances from the Social Security Scheme, providing necessary labour safety facilities, etc.); and
- complying with such orders, instructions and guidelines as may be issued by the State competent bodies from time to time (for example, carrying out dissemination and prevention measures, and complying with the requirements on reporting).

### 3. Can I direct my employees to go home or stay at home in a pandemic?

Yes, you may direct the employees to go home or to stay home provided that the employees agree and full wages are paid.

### 4. Do I have to continue to pay wages and provide other employment related entitlements during a pandemic?

No, an employee suffering pandemic is regarded as ill and he / she will be paid illness allowance by the Social Security Fund provided that sufficient medical documents proving the illness are submitted.

**5. Can I quarantine certain staff to certain parts of an office or send them to a different office?**

Yes. However, advance notice and explanation should be given to the employees and agreement of the employees should be obtained.

**6. Can I direct my employees to report suspected cases of “influenza” illnesses?**

Yes. It would be better if you encourage rather than direct the employees to do so unless regulations from the State competent bodies are promulgated which instruct you to do so.

**7. Can I screen employees and customers before allowing them to enter the workplace?**

Yes, provided that sufficient notification and explanation are given and agreement of the employees / customers have been. It would be advisable that details of such a measure are posted at places easily accessible to the employees and customers.

**8. Can I stop a customer from entering the workplace if I suspect him of being ill?**

Yes, see the response in (7) above.



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# Appendices

## Appendix 1



### Hong Kong

#### 1. Potential liability under occupational safety and health legislation

##### Obligations of employers and occupiers

Under the Occupational Safety and Health Ordinance, the employer must, so far as reasonably practicable, ensure the safety and health at work of all his employees. Occupiers are also required to ensure the safety and health of employees at a workplace where the employer does not control the workplace.

Circumstances where an employer fails to ensure the safety and health of employees at work include (but are not limited) to the following:

- a failure to provide information, instruction, training and supervision as may be necessary to ensure the safety and health of employees at work;
- a failure to maintain the workplace in a condition that is safe and without risks to health where the workplace is under the employer's control; and
- a failure to provide or maintain a working environment for employees that is safe and without risks to health (see (6), Occupational Safety and Health Ordinance).

##### Recommendations

In relation to an influenza pandemic (say, Avian Influenza A), we suggest that reasonably practicable steps would include following the various prevention and cleansing and disinfection measures which have been recommended by the Department of Health in relation to workplaces and residential and commercial buildings.

In addition, an employer or occupier should provide information regarding the Avian flu to employees in the workplace and encourage employees to notify them if the employees have respiratory symptoms and / or have had direct or potential contact with influenza cases. We also suggest that consent is obtained from such individuals regarding the disclosure of their personal details to the appropriate authorities and other personnel for the purpose of preventing any further spread of the virus.

##### Reporting obligations

There is no specific obligation in the OCCUPATIONAL SAFETY AND HEALTH ORDINANCE for an employer or occupier to report an outbreak of Avian flu to the Labour Department ("LD") or the Department of Health. However, it will be necessary to report such cases under the Prevention of the Spread of Infectious Diseases Regulations (see (4) below).



### **Liability for contravention of occupational safety and health legislation**

Contravention of health and safety legislation is a criminal offence which is subject to fines and / or imprisonment. An employee may also claim common law damages from the employer for injury suffered in a work-related incident (in addition to compensation under the Employees' Compensation Ordinance, see (2) below) where the injury is caused by the negligence or breach of a statutory duty, wrongful act or omission on the part of the employer.

## **2. Potential liability under employee compensation legislation for an employee who has contracted pandemic influenza**

An employee who has contracted Avian Influenza A out of and in the course of employment may be entitled to compensation under the Employees' Compensation Ordinance.

Avian Influenza A is prescribed as an occupational disease under the Employees' Compensation Ordinance for payment of compensation. This means that if the total or partial incapacity or the death of an employee results from an occupational disease and is due to the nature of any employment in which the employee was employed at any time within the prescribed period immediately preceding such incapacity or death, then the employee or members of his family (as the case may be) will be entitled to compensation under the Employees' Compensation Ordinance. However, this only applies in respect of specified high risk occupations including those whose work involves handling poultry or birds or their uncooked remains or their untreated products, and research or laboratory workers.

For those employees who do not fall within the specified high risk occupations, section 36 of the Employees' Compensation Ordinance provides that an employee shall have the right to recover compensation under the Employees' Compensation Ordinance in respect of a disease which is not a prescribed occupational disease if contraction of the disease amounts to a personal injury by accident arising out of and in the course of employment.

In handling non-prescribed occupational diseases, the LD will assess whether the employee concerned has contracted the disease out of and in the course of employment, having regard to the medical records, relevant information of the case and the provisions of the Employees' Compensation Ordinance. Therefore the door is open for the an employee to make a claim for compensation under the Employees' Compensation Ordinance.

### 3. Potential “occupier’s” liability

#### Who is an occupier?

Under the Occupiers Liability Ordinance, an occupier is a person having actual possession and control of premises and using them for his own purposes.

Usually a tenant will be an occupier for the purposes of the Occupiers Liability Ordinance. However, a landlord is potentially also liable as an occupier in the following respects:

- it may be liable as the “occupier” of the common areas, including the lifts, lobbies and corridors;
- it may be liable in respect of a leased unit if it has a duty under the lease to maintain and repair the unit (e.g. in respect of the air-ducts); and
- in the unlikely event that a particular “lease” provides that the “tenant” occupies only as licensee and does not have exclusive possession, the landlord may also be liable as an “occupier” of the unit concerned.

#### To whom is the duty owed?

Occupiers liability is owed to all “visitors” who are the occupier’s invitees or licensees. So, anyone invited into the property by a tenant is a person to whom the tenant owes a duty. In addition, as a landlord is invariably bound by leases to permit visitors of the tenants to enter the common areas. Accordingly, the landlord owes potential occupiers liability to any person who enters the buildings.

While the landlord may or may not have attempted to contract out its potential occupiers liability to a tenant in a lease, it helps little in limiting the Landlord’s potential liability because liability to third parties (e.g. visitors of the tenants) cannot be contracted out in the lease (s.4 Occupiers Liability Ordinance).

#### The standard of care required?

The standard of care required of an occupier is “to take such care as is reasonable in all the circumstances of the case to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted to be there” (s.3(2) Occupiers Liability Ordinance).

In determining whether an occupier has discharged his duty of care to a visitor, 2 points should be noted. First, an occupier is not responsible for any faulty work of his independent contractor provided that the occupier has taken reasonable steps to ensure that the contractor was competent and the work has been properly done (s.3(4)(b) Occupiers Liability Ordinance). So, if a tenant or landlord has delegated hygienic work to a cleaner, the tenant or landlord may not be liable for any negligence of the cleaner.

Secondly, although warnings given by an occupier do not necessarily absolve the occupier from liability (s.3(4)(a) Occupiers Liability Ordinance), it may have a bearing on the issue of whether the visitor has voluntarily assumed the risk (s.3(5) Occupiers Liability Ordinance) and whether the occupier has discharged its duty of care.

### **An occupier's obligations under the Occupiers Liability Ordinance in light of a potential influenza pandemic**

An occupier must ensure that it takes all reasonable care in the circumstances to protect the safety of visitors. Although an occupier's obligations may be confined to the common areas of a building, it could be that the common areas are those where bird flu is most likely to be transmitted.

In a very extreme case, an occupier may have a duty to prohibit entry into and use of its buildings or premises.

### **Recommendations**

Initially we would recommend that, should an Avian influenza outbreak occur in humans in Hong Kong, an occupier should ensure that its cleaning contractors are implementing the relevant hygienic measures as recommended by the Department of Health.

Warnings given by an occupier may also assist in demonstrating that it has discharged its duty. As such, the occupier should consider sending letters to tenants or staff:

- explaining the hygienic measures it has taken and will take;
- warning them of the unavoidable potential risks despite all those measures; and
- advising them as to the hygienic measures which tenants themselves and their employees and visitors should take.

It would also be prudent to display notices at the entrances of its properties advising and warning all visitors of the risks of Avian flu transmission.

## **4. Reporting obligations under the Prevention of the Spread of Infectious Diseases Regulations**

Influenza A (H5) has been added to the list of infectious diseases in the First Schedule to the Quarantine and Prevention of Disease Ordinance. Provisions relating to infectious diseases in the Quarantine and Prevention of Disease Ordinance and in the Prevention of the Spread of Infectious Diseases Regulations (the "Regulations") therefore apply to this disease.

The Quarantine and Prevention of Disease Ordinance prescribes general provisions relating to quarantine and the prevention of infectious diseases.

In general terms, the Quarantine and Prevention of Disease Ordinance:

- empowers the Chief Executive in Council to make regulations to prevent the introduction, spread and transmission of any disease in Hong Kong;
- contains offences and penalties for breaches of specific provisions of the Quarantine and Prevention of Disease Ordinance; and
- includes precautionary measures with regard to the quarantine of infected vessels or aircraft and their passengers and crew.

**A. Who is under a duty to notify the authorities?**

1. **Medical practitioners or officers** - who have reason to suspect a case of an infectious disease or, in the case of death, that an infectious disease existed. They are required to notify the Director of Health.
2. Reports also need to be made in the following circumstances:
  - Where **any person** (not under the care of a medical practitioner) who is known to be suffering or to have died from any infectious disease, reports need to be made by:
    - o **occupiers or keepers** of any premises in the case of an inmate of such premises; or
    - o **adult relatives living on such premises** in the case of a relative or other resident of such premises; or
    - o **any person** in charge or in attendance on the sick person or dead body; or
    - o **any person** having knowledge of the case of an infectious disease.
  - In addition, the following are also required to lodge reports:
    - o **Keepers of any hotel, boarding house or common lodging-house** - if there is any sick person in such an establishment; and
    - o **Owners or drivers** of any conveyance - where they carry any person whom they have reason to believe is a sick person.

**B. Who should you notify?**

Reports should be made to:

- a health officer;
- a police officer on duty at the nearest police station;
- a medical officer in charge of the nearest public dispensary; or
- any health inspector.

**C. What happens if you fail to notify?**

Any person who neglects without reasonable excuse to make such report or knowingly furnishes any information which is false concerning any such disease or death shall be liable to a fine of HK\$2,500.

**D. What powers do health officers and others have to deal with sick and infected persons?**

- A duly authorised health officer may break into any premises to ascertain whether there is any sick person or contact or to examine any dead body;
- such health officer can also remove any sick person, contact or carrier to an infectious diseases hospital or such other place as he may appoint; and
- any person removed may be detained until a medical officer opines that such person is no longer infectious.

**E. What restrictions apply to you if you know that you are infected or the person that you are caring for is a sick person?**

- A sick person or any person having the care of the sick person shall not expose other persons to the risk of infection by his presence or conduct in any street, public place, hotel, club, place of entertainment or by carrying on any trade, business or occupation.
- Such person shall not enter any public vehicles (e.g. taxi, buses, minibus, trains, trams) except with the permission in writing of a health officer or by informing the driver.

**F. What can happen to infected buildings?**

- Where any infectious disease exists in any building, a health officer may with the approval of the Director of Health, by an order require the building to be disinfected, disinfected and deratted. An Order may also be given to close the building and remove any sick person or contact.
- The health officer and any person authorised may enter or break into any premises to carry out the Order if the Order is not complied with. The cost of such work may be recovered from the owner of the building as if it were a debt due to the Government.

**G. How can areas or premises be isolated?**

- The Director of Health may order the isolation of any particular area or premises if he considers it expedient for the prevention of any infectious disease. Such isolation order may require complete isolation subject to such conditions as the Director of Health may consider sufficient.
- No person shall enter or leave any isolation area or premises except with the express permission of a health officer.
- No person shall resist or obstruct any health officer or person acting under his directions in the execution of his duties.

**H. If I fail to comply, what can happen to me?**

Any person who contravenes, or fails to comply with paragraphs (e), (f) or (g) above may be liable to a fine of HK\$5,000 and 6 months imprisonment.

## 5. Disability discrimination issues

A person who has contracted Avian influenza is likely to be suffering a “disability” within the meaning of the Disability Discrimination Ordinance and therefore the prohibitions under the Disability Discrimination Ordinance may potentially apply. However, an employer can discriminate against another person if that person’s disability is an “infectious disease” and the discriminatory act is reasonably necessary to protect public health. Influenza A is listed as an infectious disease. Therefore, provided an employer can show that the discriminatory act is reasonably necessary to protect public health, the employer will have a legitimate defence under the Disability Discrimination Ordinance.

## Appendix 2



### Malaysia

#### Occupational Safety and Health Act 1994

The Occupational Safety and Health Act 1994 applies throughout Malaysia to the industries specified in the First Schedule. These are specifically, Manufacturing, Mining and Quarrying, Construction, Agriculture, Forestry and Fishing, Utilities such as Electricity, Gas, Water and Sanitary Services; Transport, Storage and Communication, Wholesale and Retail Trades, Hotels and Restaurants, Finance, Insurance, Real Estate and Business Services, Public Services and Statutory Authorities.

The more pertinent objects of this Act are:

- to secure the safety, health and welfare of persons at work against risks to safety or health arising out of the activities of persons at work; and
- to protect persons at a place of work other than persons at work against risks to safety or health arising out of the activities of persons at work.

Pursuant to section 15, of this Act, it is the duty of every employer and every self-employed person to ensure, so far as is practicable, the safety, health and welfare of all his employees by the provision and maintenance of plant and systems of work that are, so far as is practicable, safe and without risks to health; and the making of arrangements for ensuring, so far as is practicable the safety and absence of risks to health in connection with the use or operation, handling, storage and transport of plant and substances. It is also the duty of every employer and every self-employed person to ensure the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is practicable, the safety and health at work of his employees and so far as is practicable, as regards any place of work under the control of the employer or self-employed person, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of the means of access to and egress from it that are safe and without such risks and the provision and maintenance of a working environment for his employees that is, so far as is practicable, safe, without risks to health, and adequate as regards facilities for their welfare at work.

- For the purposes of the above section, an “employee” includes an independent contractor engaged by an employer or a self-employed person and any employee of the independent contractor in relation to matters over which the employer or self-employed person:
  - o has control; or
  - o would have had control but for any agreement between the employer or self-employed person and the independent contractor to the contrary.

The employer also has a duty to notify the nearest occupational safety and health office of any accident, dangerous occurrence, occupational poisoning or occupational disease which has occurred or is likely to occur at the place of work.

Further, any registered medical practitioner or medical officer attending to, or called in to visit, a patient whom he believes to be suffering from any of the diseases listed in the Third Schedule of the Factories and Machinery Act 1967, or any disease named in any regulation or order made by the Minister under this Act, or occupational poisoning shall report the matter to the Director General of Labour.

Section 7 of the Occupational Safety and Health (Notification of accident, dangerous occurrence, occupational poisoning and occupational disease) Regulations 2004 provides that where a person at work suffers or likely to suffer from one of the occupational poisonings or occupational diseases specified in the Third Schedule and the work involves one of the activities specified in the schedule, the employer shall, within 7 days, send a report thereof to the nearest Department of Occupational Safety and Health office in an approved form. The same duty applies to any registered medical practitioner or medical officer attending to, or called in to visit, a patient whom he believes to be suffering from any of the disease or poisoning listed in the Third Schedule.

The more pertinent poisonings or diseases in the third schedule are:

Description of occupational poisoning	Nature of activity / occupation or disease
Any illness caused by a pathogen	Work involving a pathogen which presents a hazard to human health
Extrinsic alveolitis (farmer's lung)	Exposure to moulds, including fungal spores or heterologous proteins during work in, inter alia caring for or handling birds



### Employees Social Security Act 1969

Finally all employers and employees are required to make contributions to the Employees' Social Security Act 1969 which provides for the payment of either for accidents in the course of employment or while traveling to and from the place of work and occupational diseases. This fund provides social insurance and a successful claimant may obtain any of the following benefits from the fund.

#### Medical Benefit

When an employee meets with an accident or suffers from any occupational disease, he is entitled to treatment at a SOCSO Panel Clinic or at any government hospital or clinic. The employee or his representative is required to bring along a / an:

- accident Report (Form 21) or an Identification;
- letter from his employer or Report of Occupational Diseases Form 68 & Form 69 (whichever is relevant);

to enable him to get free treatment. SOCSO will settle his medical bill by directly paying the medical treatment provider.

If the treatment is received in a SOCSO Panel Clinic, the employee must continue the treatment at the same clinic until he recovers unless he is referred to a Government Hospital.

In case of a serious injury, the treatment should be at the nearest government hospital. The employee is eligible for second class ward treatment at the hospital if he requires in-patient treatment. Specialist treatment, if required will also be provided at a government hospital. An employer may submit a claim for reimbursement for medical expenditure incurred at a non SOCSO Panel Clinic for consideration.

#### Temporary Disablement Benefit

This benefit is payable to an employee who has been certified by a doctor to be unfit for work for not less than 4 days including the day of the accident. This benefit is paid for the period the employee is on medical leave. However, no benefit will be paid for the days or which the employee works and earns wages, during this period.

The daily rate of temporary disablement benefit is equivalent to 80% of the average assumed daily wage. However, if the daily rate is below MR10.00 the employee will be paid a minimum rate of MR10.00. The maximum rate payable for an employee whose wage exceeds MR1,900 a month is MR52.00 per day.

### ***How to claim***

The claimant or his representative has to submit:

- Borang 10 (Claims Form);
- Doctor's Certification (Borang 13) or the original copy of a Medical Certificate;
- In case of commuting accidents, which involve the payment of temporary disablement benefit or permanent disablement benefit, the following action should be taken :
  - o The insured or another person acting on his behalf should inform the former's employer verbally or in writing about the accident as soon as possible;
  - o The insured or anyone on his behalf should make a police report of the accident;
  - o The insured or any other person should obtain a copy of the police report and submit it to his employer;
  - o The employer of the insured person should submit the police report, sketch map of place of accident, attendance record and other documents together with the Accident Report in form 21 to SOCSO's Local Office.

### **Permanent Disablement Benefit**

This benefit is payable to an employee who has been certified, by a Medical Board or an Appellate Medical Board, to be suffering from Permanent Disablement as a result of an employment injury. If the permanent disablement is assessed to be 100%, the daily rate is equivalent to 90% of the average assumed daily wage, subject to a minimum daily rate of RM10.00.

If the permanent disablement is assessed to be 20% or less the employee can claim the benefit be paid as a lump sum.

However, if the assessment of the loss of earnings capacity exceeds 20%, the employee is given an option to commute 1/5 of the daily rate of permanent disablement benefit into a lump sum payment while the balance will be paid as a monthly pension for life. The employee may continue to work while receiving this benefit.

### ***How to claim***

The employee has to submit the following documents:

- a written application to the SOCSO Local Office for reference to the Medical Board;
- medical report (the employee is required to get a medical report from the hospital or clinic which treated him); and
- borang 10 (claim form).

### Constant Attendance Allowance

This allowance is paid to an employee who is suffering from permanent total disablement (i.e. 100% loss of earnings capacity), and is so severely incapacitated that he constantly requires the personal attendance of another person. The allowance is equal to 40% of the rate of permanent total disablement benefit subject to a maximum of RM500.

Eligibility for this allowance is determined by the Medical Board or the Appellate Medical Board and the payment is made directly to the recipient of the benefit.

### Dependant's Benefit

If an employee dies as a result of an employment injury, his dependants are entitled to this benefit. The full daily rate of dependants' benefit is 90% of the average assumed daily wage, subject to a minimum rate of RM10.00 per day.

Dependants	Share of full daily rate	Conditions
Widow	3/5	receives benefit for life after amendment of the act
Children including natural, dependant step-child, adopted child or a child out of wedlock will receive the benefit	2/5	<ul style="list-style-type: none"> <li>• effective 1 May 2005</li> <li>• receive benefit up to age 21 or marriage, whichever occurs earlier</li> <li>• if receiving higher education, SOCSO may continue paying the benefit up to completion of the first Degree or marriage, whichever occurs earlier</li> <li>• for a mentally retarded or physically handicapped child who is unable to support himself the benefit is paid as long as the child is unable to support himself</li> </ul>
Widower	3/5	receives benefit for life after amendment of the act effective 1 May 2005

If there is no widow, widower or an eligible child, the following persons can receive the benefits if they depend wholly or partially on the employee's income at the time of his death.

Dependants	Share of full daily rate	Conditions
Parents	4/10	payment of benefit will be made for life
Grandparents (if parents have passed away)	4/10	payment of benefit will be made for life
Brothers and sisters	4/10	payment of benefit will be made up to age 21 or marriage whichever occurs earlier

### ***How to claim***

The claimant should submit Borang 24 (Claim Form) and certified copies of the following documents:

- Death Certificate;
- Post-mortem Report (if any);
- Birth Certificates of all the children;
- Marriage Certificate; and
- Widow's Identity Card (if relevant).

If there is no widow, widower or an eligible child, the claimant should submit Borang 24 (Claim Form) and certified copies of the following documents:

- birth Certificate of the deceased;
- birth Certificate of all the younger brothers and sisters where applicable;
- identify Card of parents or guardian or grandparents (if relevant);
- death Certificate; and
- statement of dependency.

### **Funeral Benefits**

An amount of RM1,500 will be paid if an employee dies as a result of an employment injury or while receiving disablement benefit. Payments will be made to the eligible next of kin. If there are no next of kin, the benefit will be paid to the person who incurred the funeral expenditure. The maximum amount for the benefit is the actual amount incurred or MR1,500 whichever is lower.

### ***How to claim***

The claimant should fill-up:

- Borang 26 (Claim Form) and return it to the SOCSO Local Office;
- a certified copy of the Death Certificate.

### **Rehabilitation Benefit**

Facilities for vocational and physical rehabilitation are provided free by SOCSO to an employee who suffers from permanent disablement.

Physical rehabilitation includes physiotherapy, occupational therapy, reconstructive surgery, as well as the supply of artificial limbs such as artificial leg, hand, eye and dentures and other prosthetic appliances such as wheelchairs, crutches, hearing aids, spectacles, calipers and orthopedics shoes, including their repair and replacement. An employee who is suffering from permanent disablement and who is unable to find a suitable job due to his disablement, can apply to undergo vocational training in courses such as radio / TV repairs, electrical wiring, metal trade, repairs of refrigerator and air-conditioner, plumbing, tailoring, typing and secretarial work.

All expenses incurred for the purpose of vocational and physical rehabilitation will be borne by SOCSO based on rates and conditions determined by SOCSO.

Apart from making these mandatory contributions, there is no requirement to take out any further insurance except in the case of foreign workers as foreign workers are not covered by the scope of this Act.

### **Education Benefit**

This benefit is in the form of a loan given to dependant children who are in receipt of a monthly benefit for:

- Dependants Benefit; and
- Survivor's Pension.

or children of an employee who is in receipt of a monthly benefit for:

- Permanent Disablement; and
- Invalidity Pension.

The benefit is in the form of loan. However, it can be converted into a scholarship if the child obtains excellent results.

### ***Conditions for eligibility***

Children who are eligible for the education loan are:

- dependant children of an employee receiving Invalidity Pension or periodic permanent disablement who are below 21 years of age and unmarried at the time of the application or dependant children of an insured person, who has died as a result of an employment injury or while receiving invalidity pension or before reaching age 55 and who fulfills the contribution qualifying conditions, should be below 21 years of age and unmarried. If the child exceeds age 21 and is receiving a monthly benefit and is continuing his education in an institution of higher learning and is unmarried at the time of the application;
- has been offered a place and has registered in any university or college or Local Institution of Higher Learning including institution that has a twinning program on condition the degree is completed locally, which is registered with the Ministry of Education, to acquire a degree, diploma or a certificate which is awarded by the National Vocational Training Council, Ministry of Human Resources;
- has not been given any other scholarship or loan by any other authority; and
- the family finances are insufficient to support the cost of the education.

### ***Method of application***

The application has to be made by filling Borang "PERMOHONAN PINJAMAN PENDIDIKAN PERKESO" which is available at the SOCSO Local Office.

### ***Amount of Loan***

The amount of the loan is depends on the course taken and includes cost of living and other expenditure as determined for loans by SOCSO.

The actual amount of the loan includes:

- registration fees;
- course fees including laboratory and lecture fees; and
- examination fees;

- subscription for student associations made compulsory by the university, college or institution of higher learning; and
- other expenses will determine from time to time and include:
  - o subsistence;
  - o flight cost;
  - o books;
  - o instruments;
  - o expenditure for preparation of a thesis; and
  - o practical / training costs.

### Occupier's Liability

The Malaysian position as regards occupier's liability is based on the English common law position. Hence liability arises when premises are not as safe as they should reasonably be, and this defective state which includes activities carried out on the premises causes injury or damage to the Plaintiff.

The test of who an occupier is dependent on who has occupational control over the premises, i.e. control associated with and arising from presence in and use of or activity on the premises. Control also need not be absolute or exclusive. The standard of care required is different as against each type of entrant, i.e. contractual entrants, invitees, licensees and trespassers.

The foregoing constitute information concerning the legal minimum and therefore we would agree with the best practice as outlined in the version for Hong Kong. However, we would be concerned about being charged under section 505 of the Penal Code, i.e. for making, publishing or circulating any statement, rumour or report with intent to cause, or which is likely to cause fear or alarm to the public.

## Appendix 3



### Singapore (1)

## Obligations to Employees and Visitors in the Event of a Pandemic

### 1. Can the employer direct its employees to go home or stay at home in a pandemic?

The employer can direct its employees to go home or stay at home in the following instances:

- there is a reasonable basis to believe that the employees are ill with the pandemic disease; or
- the employees will be exposed to health risks when they enter the workplace.

The employees who will be directed to go home should continue to comply with their contractual obligations as employees.

### 2. Does the employer have to continue to pay wages and provide other employment-related entitlements during a pandemic?

Yes. As the employment tie between the employer and the employee is not severed during the pandemic, the employer is obliged to pay the wages to its employees, as well as their other entitlements under the employment contract. Refusal to pay wages and other employment-related entitlements is only possible if the employees are terminated from employment in accordance with law.

However, employers may wish to exhaust the following before terminating employment:

- using annual leave before asking employees to take unpaid leave;
- asking employees to take advanced annual leave;
- asking employees to agree to a salary reduction;
- agreeing with employees to change the nature of employment to part time employment or to a job sharing arrangement ( e.g. working alternative days);
- agreeing with employees to change their mode of remuneration to, say, on an hourly or results based basis; and
- unilateral reduction of salary.

As the above undertakings are a departure from the employees' contracts of employment, express consent must be sought from the concerned employees that they agree to such arrangements.



### **3. Can the employer quarantine certain staff to certain parts of an office?**

An employer is entitled to ask an employee to work from a particular part of an office if it is to ensure his / her and / or other's health and safety.

### **4. Can the employer direct its employees to report suspected cases of "influenza" illnesses?**

In the event of an influenza pandemic, such a directive would be a lawful and reasonable direction to an employee.

### **5. Can the employer screen employees before allowing them to enter the workplace?**

To ensure the health and safety of its employees, the employer can reasonably screen the employees to prevent the possible transmission of the disease. Temperature taking as discussed in Part B may be carried out for this purpose.

### **6. Can an employer discriminate against an employee who is suffering or is likely to suffer influenza?**

As a general rule an employer cannot discriminate against an employee on account of disability. However, in extreme cases where the health and safety not only of the concerned employee but the entire workforce are at stake, the employer may reasonably set up schemes, including discriminatory acts, to protect public health.

### **7. What are the duties of an employer in so far as its visitors are concerned?**

The employer must take necessary measures to ensure the health and safety of persons not being its employees who may be affected by any undertaking carried on by said employer in the workplace.

Additionally, the employer must make certain that all means of access to or egress from the workplace are safe and without risks to health to every person within those premises.

## Appendix 4



### Singapore (2)

## Liability Issues Arising from an Influenza Pandemic

### 1. Potential liability under occupational safety and health legislation

As previously stated in Appendix 3, the employer shall take measures necessary to ensure the safety and health of persons at work which may include, among others:

- providing and maintaining a work environment which is safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work;
- ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article or process used by the employees; and
- providing information, instruction, training and supervision to ensure the safety and health of the employees there is a reasonable basis to believe that the employees are ill with the pandemic disease.

A violation of this legislation is a criminal offence which is subject to fine. Additional fines and / or imprisonment are imposed on repeated offenders.

Under the Workplace Safety and Health Act, an employer is required to appoint safety and health officers and co-ordinators and safety and health committees to carry out management policies to ensure the health and safety of employees.

An employer must report any occurrence of occupational disease in the workplace to prevent its potential spread to other employees. Failure on the part of the employer to report such information shall subject it to payment of fines.

For this purpose, an employee shall not be dismissed from employment because he has assisted an authorised person (by giving information or otherwise) for the investigation of an alleged breach of an employer's obligation.

An employee shall not likewise be dismissed if he has in good faith sought the assistance of, or made a report to, an authorised person in relation to a workplace safety and health matter.

### 2. Liability of the employer under the Workmen's Compensation Act

Avian influenza is listed as an occupational disease in the Second Schedule of the Workmen's Compensation Act. Under the law, if an employee contracts a disease as a result of or in the course of his or her work, the employer shall be liable to pay for compensation for this disease. The employer shall likewise be liable for payment of compensation if the employee becomes incapacitated or dies as result of the disease.

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