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Fighting the Novel Coronavirus Covid-19 and the Way Forward: How to handle the employment related issues in Hong Kong?

Employees are the most valuable assets of a corporation and being able to manage them well is crucial, especially during difficult times like the recent coronavirus outbreak. Contingency measures such as (1) flexible work arrangements, (2) suspension of recruitment, (3) postponement of the commencement dates of new recruits, (4) withdrawal of employment offers, (5) reduction or suspension of discretionary bonus, (6) special leave arrangements or (7) restructure or reduction of manpower may have to be considered and implemented at different stages, depending on the development and impact of the outbreak.

Before implementing the above measures, employers shall ensure that such measures will be in compliance with the law (including but not limited to the Employment Ordinance and various other employment related ordinances and some common law duties) as well as the provisions stipulated in the employment contracts, employees' handbook, corporate policies and other employment related agreements.

As to the way forward, employment contracts and other employment related agreements shall be reviewed and revised to provide further protection and power for the employer to deal with various special situations. Moreover, corporations shall also consider a possible transformation of their IT equipment, systems and networks towards a digital workplace so as to thrive in the digital world.

Impact of the Coronavirus Outbreak

The Hong Kong community has been fighting the novel coronavirus for several weeks. More people had been placed under quarantine or medical surveillance because they are likely to have been exposed to the risk of contracting the infectious disease.

With effect from 8th February 2020, to tighten the control of the spread of the novel coronavirus, the Hong Kong Government imposed a 14-day compulsory quarantine for all people entering Hong Kong from the Mainland or have been to the Mainland in the past 14 days before arriving Hong Kong (save for those who are exempted). People who are subject to the quarantine order have to stay at home or the dwelling places all day, failing which, they may commit a criminal offence.

Flexible Work Arrangements and other Measures

The latest compulsory quarantine order may give rise to a sudden reduction of manpower if some employees are subject to the quarantine order and cannot perform their duties at their usual work place for 14 days. To further control the spread of the infectious disease, the Government also appeals to corporations to minimize the number of employees working in the same location.

Some corporations are better prepared than others in dealing with the outbreak if the relevant employment contracts and/or employees' handbook and/or corporate policies contain provisions for flexible work arrangements.

The relevant policies or circulars for flexible work arrangements may set out (i) the circumstances under which employees may or shall work from home, (ii) the channel, rules, procedures and mechanism for employees to report their duty on line, their travel history, travel plans and health condition etc., (iii) the communication networks and reporting line for each team and each department, (iv) helplines and contact details of the relevant person-in-charge, (v) alternative work place in case one or more offices are closed or cannot be used.

The above measures can be implemented smoothly only if there is sufficient technical IT support. Therefore, continual investment in the corporate's IT systems will be crucial in the years to come. Even if a corporation has a good IT system in place, more computers and upgrade of the system may be required as more employees are expected to use remote access at the same time.

If there is no provision in the employment contract or employment related document regarding flexible work arrangements or if the corporation has insufficient technical support, it is never too late to take action now!

Corporations may formulate and inform their employees about their measures for ensuring a safe working environment (e.g. regular disinfection of the work place, improved ventilation of office premises, business trip to the places which are seriously affected by the outbreak shall be suspended, communicate with clients by means of telephone conferences instead of face to face meetings etc.).

Employees shall be informed that the corporation will closely monitor the situation and continue to review the necessary actions to take. Frequent communication between the corporate's representatives and their employees are important during this period so that both parties will know the needs, concern and expectation of each other. Moreover, it will also enable the parties to obtain timely consent (e.g. employee's consent to provide information about their health condition to the employer) or the corporate's approval to take necessary actions for the best interest of the corporation and its employees.

Corporations may consider if the medical and life insurance policies for their employees shall be enhanced to provide further protection for the employees during this period and thereafter.

Corporations which have no succession planning for their management team shall also think about it now so that another team of leaders will be able and ready to act if and when necessary.

Suspension of Recruitment

Apart from handling the work arrangements for existing employees, some corporations are quick to suspend their recruitment process. They will give written notice to the recruitment agents about their decisions to suspend the recruitment process for a certain period and to utilize the fees paid for future recruitment if the terms of the relevant agreements permit.

Postpone the Commencement Date

For job candidates who had already signed the employment contract but yet to commence their employment, corporations may try to negotiate with the relevant new recruits for a later commencement date of employment. Depending on the terms as stipulated in the employment contract and the subsequent correspondence between the parties (if any), the employer may or may not be able to postpone the commence date unilaterally. So, employers shall review the employment terms and the relevant correspondence thoroughly to ascertain their legal position before communicating to the new recruits.

"Withdrawal" of Employment Offer

If the situation does not improve soon, corporations may have to face increasing financial pressure which makes it practically impossible to have new recruits. If the employment offer has not been accepted by the job candidate, the 'employer' may withdraw the offer. However, if a valid contract was duly signed by the employee and the employer's authorized representative, the employer may not be able to revoke it. So, apart from trying to negotiating with the new recruits, employers may consider other practical means to deal with the matter. For instance, if the employment contract contains a provision for a probation period (e.g. 3 months), the employer may make use of the probation period to see if its financial position improves and whether the employee is worth retaining, if not, either party may terminate the employment without notice or payment in lieu of notice during the 1st month of the probation period according to the Employment Ordinance.

Reduction or Suspension of Discretionary Bonus

Some corporations will pay "Discretionary" bonus to their employees during the good years. If there are clear provisions in the employment contract which stipulates that such bonus may be payable at the sole discretion of the employer and in practice, such bonus had been paid on discretionary basis over the previous years, the employer has the right to reduce or suspend such payment in difficult years as it deems appropriate. However, employees shall be informed that the corporation will review the situation and reconsider distributing discretionary bonus when the corporate's business improves so that the morale of the employees will not be seriously affected.

Special Leave Arrangements

Some caring corporations may allow employees to apply for special unpaid leave if special situation arises (e.g. urgent leave required to take care of close family members who are sick). Corporations may also try to appeal to their employees to take annual leave (especially those who have accrued many days of annual leave from previous years of service) during this difficult time or if the situation deteriorates, to take special unpaid leave to enable the corporation to reduce its operation cost so that no redundancy will be necessary.

Restructure/Redundancy

In case the situation does not improve within a reasonable time, corporations may have to consider possible restructuring plans, to reduce the number of headcounts by means of redundancy. If that is necessary in due course, employees shall be treated equally and there should be no discrimination with regard to the sex, disability, family status or race of the employees.

Conclusion

In view of the challenge ahead, corporations shall implement legal and practical measures to deal with the crisis swiftly, look for new opportunities, enhance their IT systems and business technology to work more efficiently and at the same time, show their care and concern of the wellness of their employees so that they can be united and march on as stronger high achievers for their employers.

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