

16 September 2021

# THAILAND

## Newsletter

### Key Contacts



Waree Shinsirikul  
☎ +66-2-009-5188  
✉ waree.s@mhm-global.com



Isorn Chandrawong  
☎ +66-2-009-5157  
✉ isorn.c@mhm-global.com



Ratthai Kamolwarin  
☎ +66-2-009-5185  
✉ ratthai.k@mhm-global.com

## Thailand: Preventing, mitigating, and reacting to possible COVID-19 exposure in the workplace – a practical guide for employers

### Introduction

With the arrival of the Delta variant of the COVID-19 virus in Thailand and a slower than expected vaccination rollout, the pandemic continues to have an impact on many business operations.

In general, employers in Thailand have a duty of care to provide safe and hygienic work conditions for their employees. In addition, Thai law requires that such duty of care includes the protection of an employee's physical and mental health. Employers need to be aware of COVID-19 regulatory requirements and preventative measures issued by the government as well as what they need to do to meet their duty of care obligations to employees. Employers can meet their duty of care requirements by following best practice, whether to prevent the spread of infection or once an employee is known to be infected. Employers should be aware of preventative measures which can lawfully be implemented to mitigate against the risk of allegations of having an unhealthy work environment.

This briefing will discuss practical measures employers should consider during the COVID-19 pandemic in Thailand to meet their regulatory and duty of care obligations.

### Preventative measures

Given the overall duty of care which employers owe to employees, business operators should implement policies and procedures to prevent the spread of COVID-19 which meet regulatory requirements, and which are also practical in nature to prevent the spread of Covid-19.

Some preventative measures employers should consider include the following:

- Communication of preventative measures: Employers should provide clear notices to employees of any measures to be implemented at a workplace;
- Implementation of work rotations or remote work: Policies to limit in-person contact should be considered to limit the number of employees in a workplace;
- Pre-Screening: Employers should measure each employee's temperature and assess symptoms prior to commencing his/her work. Ideally, temperature checks should happen before the employee enters the workplace;
- Masks: Employees should be required to wear a face mask while in the workplace;
- Social Distancing: Each employee should maintain a two-meter distance between themselves and others, and practice social distancing as work duties permit in the workplace; and
- Disinfecting and Cleaning Workspaces: All areas such as workstations, bathrooms, common areas, shared electronic equipment should be cleaned and disinfected routinely.

## Mitigation measures following Covid-19 exposure

In addition to general preventative measures mentioned above, employers should develop plans to mitigate the chance of spread of COVID-19 within a workplace if an employee has been potentially exposed. Such measures may include the following:

- Regular Monitoring: As long as an employee doesn't have a temperature or symptoms, he/she should self-monitor under the supervision of his/her employer's occupational health program;
- Required notification from employees if potentially exposed: Employers should consider requiring employees to notify them of potential exposure. That employee should stay home, isolate and follow steps recommended by the Department of Disease Control, Ministry of Public Health (the "Recommended Steps").
- An employee should be required to notify his/her employer or supervisor and follow Recommended Steps if he/she is well but has a sick household member with COVID-19.

By law, employees are required to adhere to work rules including policies and orders insofar as they have been: 1) disclosed by employers; and 2) have been duly accepted by employees. A violator of such legitimate regulations, policies, and orders may be subject to disciplinary actions as stipulated in the work rules.

## Reacting to a COVID-19 infection in the workplace

If an employee has been confirmed to have contracted COVID-19, employers should consider implementing the following measures:

---

<sup>1</sup>"Let's fight together against COVID-19 – A "Handbook for Self-care" is available for download at the website of the Department of Disease Control, Ministry of Public Health at <https://ddc.moph.go.th>

- Risk assessment: Employers should have in place a risk assessment plan to determine which other employees within a workplace may have had exposure with the infected employee.
- Inform employees who had possible close contact (within 2 meters for a cumulative total of 15 minutes or more over a 24-hour period) with the infected person but maintain confidentiality.
- Self-isolation: Infected employees should isolate and follow the Recommended Steps if he/she is asymptomatic (no symptoms) or pre-symptomatic (not yet showing symptoms).
- Employees should not be permitted to return to work until the criteria to discontinue home isolation are met, in consultation with healthcare providers.
- Cleaning: Close off areas used by the Infected Person within the last 24 hours (the "Area") and refrain from using that space or spaces until they have been cleaned and disinfected. While cleaning the Area: (i) open doors and windows and use fans or HVAC (heating, ventilation, and air conditioning) settings to increase air circulation in the Area (ii) Wear a mask and gloves while cleaning and disinfecting (iii) Vacuum the space if needed. Use a vacuum equipped with high-efficiency particulate air (HEPA) filter and bags, if available.

Instructing employees to stay away from the workplace is a lawful order. However, if an employer also instructs employees to work outside their normal workplace (i.e., work from home), employers are still obliged to pay employees their salary.

## Legal obligations of employers

### Communication with Government Authorities

COVID-19 has been designated as a dangerous communicable disease under the Communicable Diseases Act B.E. 2558 (2015) (under the Notification of the Public Health Ministry dated 26 February 2020). Therefore, businesses or employers have a legal duty to notify a communicable disease control officer of any COVID-19 case in their workplace through available channels of communication, e.g., by telephone or, email, within three hours of discovery of exposure. The communicable disease control officer has the authority to order an infected employee and employees that may have been exposed to the infected employee to quarantine.

### Employers ongoing duties

#### A) Termination

Employers may not terminate employees for cause if such employees have been infected with COVID-19. Termination based on that ground alone is considered termination without cause. As such, an employer will be liable to pay the requisite package for termination 'without-cause'. This includes severance pay, wages in lieu of advance notice and unused leave-entitlements. In addition, employers can face further liability if an employee is successful in bringing a case against the employer for unfair termination in a labour court.

In such cases, the labour court has discretion to order reinstatement of an employee or order that compensation be paid, in addition to the statutory payments which must be paid upon termination of an employee.

#### B) Labour Protection Act considerations

It is advisable for an employer to implement flexible, non-punitive paid sick leave and supportive policies. Under the Labour Protection law, an employee who is infected with COVID-19 is entitled to take sick leave with pay for a period of up to 30 working days. If an employee needs more than 30 days to comply with the COVID-19 preventive measures, the employer should encourage or support him/her to take other types of leave with pay, such as holidays, or personal leave. If other statutory leave with pay options no longer exist, furlough (leave without pay) as agreed with the employer is an alternative option.

#### **Conclusion**

The current regulatory regime provides a basis for the development of internal work rules by employers to ensure that workplaces remain as safe as practicable for their employees. Such measures should include not only preventative actions, but policies that cover mitigating the spread of COVID-19 to employees in cases of actual, or potential exposure by employees to the virus. In addition, employers should implement clear guidelines to react to confirmed infections of employees, including ensuring that all regulatory obligations are followed.

If you have any questions in relation to the issues raised in this briefing, please contact the authors in the left-hand column.

## Contact Us

Chandler MHM Limited  
17<sup>th</sup> and 36<sup>th</sup> Floors  
Sathorn Square Office Tower  
98 North Sathorn Road  
Silom, Bangrak, Bangkok 10500 Thailand  
[www.chandlermhm.com](http://www.chandlermhm.com)

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact [bd@mhm-global.com](mailto:bd@mhm-global.com).