

SOALAN LAZIM (FAQ'S)
BERKAITAN PERINTAH KAWALAN PERGERAKAN
KEMENTERIAN SUMBER MANUSIA
BILANGAN 2

DEPARTMENT OF OCCUPATIONAL SAFETY AND HEALTH MALAYSIA

- 1. Does the construction sector (building and renovation works) fall under the Movement Control Order (MCO) as announced by the Prime Minister?**

Yes, According to a media statement by the National Security Council (MKN) on March 18 2020, Construction activities are classified as non-essential services. This means all construction and maintenance work should cease immediately.

- 2. Are there exceptions to the MCO for any construction and maintenance industry tasks or activities?**

Yes, for critical works.

- 3. What is deemed as a 'critical work'.**

Critical works are ones that if discontinued, will create danger to workers, the public or the environment.

- 4. What are examples of critical works under the DOSH scope?**

Examples of critical works are as follows:

- a. Slope repair;
- b. Traffic Management Control (TMC);
- c. Upgrading works of facilities at critical service premises;
- d. Works to ensure safety of scaffolding;
- e. Works to ensure safety of tower cranes and chained cranes;
- f. Construction of Bailey Bridge at the location of collapsed bridges;
- g. Emergency works under a contracted agreement; and
- h. Other works that, if left incomplete, shall create danger.

5. What is the protocol to apply for DOSH approval to conduct critical works in the construction industry?

An application must be sent containing these documents:

- a. A formal letter that contains the following information:
 1. Name of project;
 2. Location of project;
 3. Project Registration Number with DOSH;
 4. Name and Phone Number of Project Manager;
 5. Name and DOSH Registration Number of Safety and Health Officer of the project (if any)
 6. Name and Registration Number of Site Safety Supervisor (SSS);
 7. Name and position of the designated person who will supervise the critical works; and
 8. Concrete reason why said critical work must be done.
- b. Photos of location around the critical works site;
- c. HIRAC documents for said critical works;
- d. Work safety procedures to conduct the critical works;
- e. Copy of approval letter to conduct critical work from Works Dept (JKR); and
- f. Steps taken by the employer to prevent the spread of the COVID-19 infectious disease during the execution of the works..

A complete application must be sent via email to State DOSH Offices where the project is located and CCed to projkkp@mohr.gov.my. Incomplete applications will be REJECTED by DOSH.

6. How does one send a DOSH 6 form for a work accident during the period of the MCO?

DOSH 6 must be submitted online via mykkp.dosh.gov.my ONLY.

7. What is the interview schedule for Orang Yang Kompeten (OYK) during the MCO?

All interview and verification activities for OYK is postponed until further notice.

8. My Notice of Improvement (NOI) ends during the MCO. How do I close said notice?

Proof of improvement must be submitted via email. Officers will evaluate degree of improvement conducted and if found to be satisfactory, the officer will give a written response. Physical closure of said notice will be done after the period of the MCO.

9. Should maintenance work on passenger lifts at apartments/business complexes be stopped during the MCO period?

Rescue and repair work for lifts may be conducted. Other maintenance work to be done at a minimal level but also dependent on latest orders from MKN.

10. Is the helpdesk MyKKP operational?

MyKKP helpdesk service operation as usual via phone and email:

- a. Tel : 01111929207 and 0182584685
- b. Email: <mailto:mykkp@mohr.gov.my>
- c. Website: <http://mykkp.dosh.gov.my>

11. Re-inspection on certified machinery that ends the certification period within the MCO (18 Mac 2020 – 31 Mac 2020)?

- a. Said machinery may be considered for a postponement of re-inspection in accordance with existing laws with the condition that there is a formal request from the owner of the machinery.
- b. Division/State Director may allow the inspection be done on grounds of critical safety, but still dependent on current orders from the MKN.

12. What are actions that can be taken on employers who do not follow the MCO (March 18 – 31 2020)?

Report to the Police and RELA officers. The Police and RELA have been appointed as officers with power under Section 3, Prevention and Control of Infectious Diseases Act 1988 (Act 342).

13. Employers don't pay wages if employees don't come to work

Refer to Department of Labour (JTK).

14. Employer not taking enough steps at work sites to address risk of COVID-19.

Report to nearest State DOSH office.

15. If employer has been given permission by Government to operate during the MCO, what are the employer's responsibilities to ensure appropriate steps are taken to prevent COVID-19 spread at the workplace?

Employer has to take the following steps:-

- a. Employer must conduct risk assessment and improve work procedure to ensure risk of exposure to the virus for employees can be minimised and create a work from home system for employees not involved with critical work activity.
- b. Employers must conduct health screening by checking body temperature of all employees, every day at the entrance to premises and to ensure employees are free from fever, cough or difficulty in breathing. Employees with abnormal body temperatures have to be referred immediately to hospitals/clinics to get medical opinions and treatments.
- c. Employers must identify employees who have been to countries affected by COVID-19, especially if they exhibit symptoms such as fever, coughs, and difficulty in breathing, ensuring they get treatment IMMEDIATELY. Employers must adhere to quarantine orders issued on his or her employees by registered medical practitioners or local authorities.
- d. All employers and employees are not allowed to leave the country during the period of the MCO.
- e. All employers must provide appropriate personal protection equipment to employees based on the risk assessment conducted earlier.
- f. Employers and employees must practice a high level of personal hygiene such as constantly washing hands using water and soap or hand sanitizers.

- g. Employers and employees must avoid crowded places or get close with any individual exhibiting symptoms as well as practicing social distancing among all personnel.
- h. Employers and employees must seek medical treatment if they fall ill (especially if exhibiting symptoms of respiratory infection such as fever, coughs and difficulty in breathing)
- i. All employees must cooperate and adhere to employers' instructions in handling the spread of this disease in accordance with Section 24(1) of Occupational Safety and Health Act 1994.
- j. Employers and employees must be ready to obey any and all orders and prevention procedures for COVID-19 as determined by the Ministry of Health Malaysia and the MKN from time to time.

DEPARTMENT OF INDUSTRIAL RELATIONS

PAYMENT OF WAGES AND SALARIES

16. Do employees have to pay wages for the 14 day period under the MCO from March 18-31 2020? [Prevention and Control of Infectious Diseases (Measures Within the Infected Local Area) 2020.Regulations under Prevention and Control of Infectious Diseases Act 1988 (Act 342)]?

Yes, employees wages and relevant allowances must be paid, unless the allowance is tied to attendance/travel (that cannot be fulfilled during that period) .

17.If employers conduct salary cuts or lay off workers or force employees to take annual leave with the excuse that COVID-19 has affected their business or fail to pay full salaries during the 14 days of the MCO, can employees assume that a breach of service contract has occurred and that subsequently his or her services have been terminated as part of a *constructive dismissal*?

For an employee to assume his or her services has been terminated as part of a constructive dismissal, four things must happen:

- i. There was a breach of the service contract.
- ii. The breach must involve breaking the root of the contract.
- iii. Employee must inform and give time to the employer to rectify the breach..
- iv. Employee must immediately leave the position because of the breach and not due to other reasons.

18. Can employers instruct employees to take annual leave or to deduct annual leave for the period between March 18-31 or on any day from this period?

Employers cannot force employees to take annual leaves as annual leaves are subject to the will and application of the employee him/herself.

19. Can workers' unions bring the issues concerning employers' failure to pay salaries or forcing employees to take annual leave as industrial conflict under Section 18 Industrial Relations Act 1967?

Workers' unions can bring the issues concerning employers' failure to pay salaries or forcing employees to take annual leave as industrial conflict under Section 18 Industrial Relations Act 1967 if the conflict involves members of the union.

20. Can employers affected by COVID-19 like airline companies conduct pay cuts on employees as a means to avoid layoffs?

Any form of pay cuts must receive agreement from the employee. If there is a collective agreement, negotiations and assent must be acquired from unions representing the affected workers.

CLOSURE OF BUSINESS PREMISES

21. Can companies that are required to close premises due to the MCO instruct their employees to work from home? If the employee refuses this instruction, can the employer take disciplinary action?

The MCO does not prevent any employer from instructing employees to work from home. Employers can take disciplinary actions if the employee disobeys the instruction.

22. Can companies that are required to close their premises according to the MCO instruct their employees to come to work as usual or work half day?

No. If any employer instructs employees to come to work during the MCO, reports can be made to the MKN.

FRUSTRATION OF CONTRACT

23. Can employers affected by COVID-19 conduct retrenchment of employees?

Retrenchment is reduction of employees due to surplus in workforce. Generally, retrenchment is a prerogative of the employer. However, to ensure retrenchment is fair, there are three conditions that the employer must fulfil. First, the reason that the business was affected by COVID-19 is genuine and not made up. Secondly, employers must take steps to avoid retrenchment first such as reduction in work hours, freezing new hires, limiting overtime, limiting work on weekends and public holidays, slashing wages, executing temporary lay offs, etc. Third, should retrenchment be unavoidable, foreign workers' employment must be terminated first. While retrenching local employees, it is best to adhere to a LIFO principle (Last In First Out). However, this principle may be bypassed should the employer have a solid justification.

24. What can employees do should they be unhappy with retrenchment due to COVID-19?

Employees who consider the retrenchment conducted by their employers to be done without reason may submit a written representation to the Director General of Industrial Relations in order to be reinstated to their original positions. The representation must be submitted in writing to the office of the Director General of Industrial Relations within 60 days of being laid off. [Section 20 Industrial Relations Act 1967]

25. Can the 14 day period of the MCO be considered frustration of contract?

No, because the failure of employer or employee to fulfil the contract does not involve long durations.

DURATION CALCULATIONS

26. Is the 14 day period under the MCO from March 18-31 2020? [Prevention and Control of Infectious Diseases (Measures Within the Infected Local Area) 2020 Regulations will be counted in the 60 days period as specified under Section 20 of the Industrial Relations Act 1967?

The 14 day period under the MCO from March 18-31 2020 will be counted in the 60 days period as specified under Section 20 of the Industrial Relations Act 1967. However, should the 60th day fall on any day during the MCO, April 1 2020 will be deemed the 60th day.

27. Is the 14 day period under the MCO from March 18-31 2020? [Prevention and Control of Infectious Diseases (Measures Within the Infected Local Area) 2020 Regulations will be counted in the 60 days period as specified under Section 9 of the Industrial Relations Act 1967?

The 14 day period under the MCO from March 18-31 2020 will be counted in the 60 days period as specified under Section 9 of the Industrial Relations Act 1967. However, should the 60th day fall on any day during the MCO, April 1 2020 will be deemed the 60th day.

CASE FILING

28. Can employees who believe their services were terminated without valid reasons, submit representation of retrenchment through email/fax to the nearest office of Director General of Industrial Relations during the MCO period?

Yes. Department of Industrial Relations will accept any representation of retrenchment email or fax.

ESSENTIAL SERVICES

29. What is the definition of “essential services” as announced by the Prime Minister?

“*Essential services*” refers to a list published under Prevention and Control of Infectious Diseases (Measures Within the Infected Local Area) 2020 Regulations and it covers the closure of all Government and private sector premises except those deemed to be essential services which are:

- i. Banking and finance
- ii. Elektrik and power
- iii. Firefighting
- iv. Service and operations of ports, dockyards and airports, and covers loading, lighterage, cargo handling, navigation and warehousing of commodities.
- v. Postal service
- vi. Prisons
- vii. Production, filtration, storage, supply, distribution of fuel and lubricants
- viii. Healthcare and medicine
- ix. Waste management and public sanitation
- x. Sewage
- xi. Communications, radio, broadcast and TV
- xii. Telecommunications
- xiii. Land, air and water transport
- xiv. Water
- xv. E-commerce
- xvi. Defence and security
- xvii. Food supply
- xviii. Wild life
- xix. Immigration
- xx. Customs
- xxi. Hotels and accommodations
- xxii. Whatever services or work deemed by the Minister as essential or critical to public health or safety.

30. How about companies that want to request exceptions to closure of business premises. To whom can they apply?

Any business premises that do not provide essential services can be opened with the condition the owner and tenant of the premises received a written permission as stated under Section 5 (2) [Prevention and Control of Infectious Diseases (Measures Within the Infected Local Area) 2020 Regulations]

31. For companies listed under essential services, can employers subtract leave days of employees that are not required to go to work due to operations being at minimal?

Employers cannot force employees to take annual leaves as annual leaves are subject to the will and application of the employee him/herself.

EMPLOYEES SUSPECTED/CONFIRMED POSITIVE COVID-19

32. Should the employer still instruct the employee to go to work even though the employee is under quarantine, can the employee reject the instruction? Can the employer take disciplinary action?

Employers can't instruct an employee under quarantine to go to work or take disciplinary action on his absence.

ERP PROGRAMME AND OTHER BENEFITS

33. Will employees affected by COVID-19 liable to receive any benefits from the Government?

Government has announced special incentives on this matter:.

<https://www.pmo.gov.my/2020/03/mesyuarat-majlis-tindakan-ekonomi-bil-1-2020/>

34. Any queries on ERP, please refer to FAQ on PERKESO or call PERKESO at 1-300- 22-8000 or ask via email to perkeso@perkeso.gov.my or via PERKESO's Facebook: [facebook.com/perkeso.official](https://www.facebook.com/perkeso.official)

MINISTRY OF HUMAN RESOURCE

20 MAC 2020

Last updated 23 March 09:00