



# FAQs: Employment Matters

COVID-19 Special

4 April 2020

## Rights of employees

As a result of the significant downturns in businesses due to the COVID-19 outbreak, numerous measures have been implemented by employers to cut costs, including dismissals, short-time working, pay reduction, and unpaid leaves. On 29 March 2020, the government announced that several such measures had been carried out against the Employment Act (Law Number 2/2008).

Following the announcement, the key concern has been what rights employees may have in dire situations like the current COVID-19 pandemic situation. The below set of frequently asked questions have been put together to better shed light on such concerns of employees.

### **1. *Can my employer send me home if I am symptomatic, and refuse pay?***

For the safety and wellbeing of other employees, the employer may require an employee to leave the workplace if the employee is showing symptoms of a transmissible illness.

However, it is advisable for employers to plan and develop a strategy by which the employers will act in scenarios where the employee is symptomatic, which should be communicated to the employees before taking any such action. Employers must also ensure that the decision to send an employee home was made in a non-discriminatory manner. Where the employee is asked to stay at home, the employee would be eligible for normal pay, if the employee is required to carry out the daily work responsibilities from home.

**2. *What is my employer's responsibility to ensure a safe work environment for me?***

Section 75 of the Employment Act explicitly provides for duties of employers to protect the health and safety of employees and among other things include, duty to provide safe workplace, procedures, equipment, and protective gear depending on the type of work involved. Should employers fail to adhere to the duty of providing a safe work environment, employers will be held liable for such failures.

**3. *Can my employer terminate my employment if I refuse to go to work because of concerns about coronavirus contamination at work?***

Yes, this could happen, but employers are expected to be considerate and allow their employees (all or some depending on their staffing requirements) to work remotely or take leave where the employee has annual leave remaining. However, if an employee's refusal to attend work is unreasonable, employers may take disciplinary action which may culminate in termination of employment. Before any such action is taken, employers should follow proper procedures such as informing and discussing with the employee to see if there are possible solutions to the concerns of the employees.

Whichever decision the employers make, employers should be empathetic towards employees who have a genuine and reasonable fear that coming into work could put them at risk of contamination or else could potentially lead to legal claims.

**4. *Is my employer obligated to pay me if they ask me not to come into work due to COVID-19?***

Employers may ask employees to not come into work provided that (a) employer has allowed employees to work from home; or (b) employer has unilaterally asked employees to take their unutilised leave; or (c) where the employer has terminated the contract of employment.

Where the employee is asked to work from home, employers must pay the employees their deserved remuneration. Where the employee is required to take annual leave, salary for the annual leave period should be paid prior to the commencement of annual leave. However, where the employer asks not to come into work having terminated the employment contract, the employer will not be obligated to pay the employee after such termination - in such case the employer should make final settlement within seven days of termination of employment.

**5. *Can my employer cancel my pre-approved leave?***

Under the Employment Act, the employer has the power to decide the commencement date of leave. Thus, it may very well be the case that employers are allowed to cancel pre-approved leaves, provided they have good business reasons to do so. This could be because of unexpected circumstances that may require the employee to attend to work - for instance, senior staff at resorts may be needed to manage the affairs in an unprecedented situation as the current pandemic situation. Or it could be because employers need to cancel pre-approved leaves of employees since

they require employees to take annual leaves during the period when the resort is temporarily closed due to the COVID-19 outbreak.

There is no precise guidance on cancellation of pre-approved leaves in the Employment Act of the Maldives or any other law for that matter. However, in other jurisdictions such as the United Kingdom, employers are required to give notice to employees of cancellation of their pre-approved leaves. The notice period often needs to be of at least the same length as the period of leave cancelled.

**6. *I work at a resort and what will happen to my annual leave if I cannot leave the resort before the expiry of the leave period?***

The Employment Act does not specifically provide for a situation where as a result of external factors such as government-backed measures, employees are prevented from spending their annual leave away from their workplace (e.g. a resort) and at a destination they prefer.

However, if you are unable to leave the resort as a result of being placed under quarantine or any other government-backed containment measures, and you end up spending your annual leave (in full or in part) at the resort, the days you spend at the resort is likely to be regarded as utilized annual leave. This is because the concept of 'leave' for the purpose of the Employment Act is likely to be regarded as release from contractual obligations - not necessarily leave at a preferred destination.

**7. *Can I require my employer to allow me to work from home?***

Generally speaking, employees are required to carry out work responsibilities at a place designated by the employer, as such employees do not have the authority to choose the place of work.

Nevertheless, considering the current situation, if an employee is advised to self-isolate by a medical practitioner, then the employer can be deemed to have an obligation to allow the employee to work from home. However, if self-isolation is the employee's choice, rather than instruction by a medical practitioner, then the decision should be mutually agreed between the employer and employee.

Given that employers are strongly encouraged by the Government and the Health Protection Agency to facilitate flexible working including work from home during COVID-19, if the employees are able to carry out the employment responsibilities by working from home, then it is likely to be expected of the employer to facilitate working from home.

**8. *Can my employer lay me off temporarily due to the COVID-19 outbreak?***

A temporary lay-off is a suspension of an employee's employment with the understanding that the employee will resume back his/her position within a specified period. A temporary lay-off may only be imposed for financial or economic reasons and other such temporary business interruptions.

Employers seeking to temporarily close down the operation due to the COVID-19 pandemic and choose to lay off some or all of the employees may be able to apply this concept.

Although the possibility of temporarily laying off employees is not provided for under Maldivian Law, sending employees on paid/unpaid leave for a period of time has been recognized as a mechanism to cope with the temporary disruption of business of the company in judicial precedents.

Preferably, temporary lay-off of an employee must be stated in the employment contract for the employer to temporarily lay-off and avoid any future disputes.

The employment agreement and employer-employee relation will remain effective during the period of lay off, and any mutual variation brought to the terms of employment agreement would also be applicable for the period of lay-off as per the lay-off policy established by the employer.

**9. *If I am afraid of coming to work and contracting COVID-19 will I be entitled to paid sick leave?***

For employees to be eligible for paid sick leave for more than two consecutive days, employees are required to provide a medical certificate provided by a medical practitioner specifying the nature of illness. An employee may very well claim sick leave for one day - but this is not advisable since the fear of contracting COVID-19 is unlikely to be regarded as an illness. However, if an employee's fear is related to a serious underlying health condition, they may be eligible for statutory sick leave if the danger of contracting the disease is imminent.

**10. *Are employers required to provide paid leave if I am quarantined?***

If an employee in quarantine/isolation has sick leave balance from which to utilize, the employer may require the employee to use such leave for the duration of the quarantine/isolation period. Section 42 of the Employment Act, provides that employees are eligible for 30 days of sick leave with pay for each calendar year. If an employee in quarantine/isolation has exhausted their sick leave for the 12 months, the employer may require the employee to utilise accrued annual leave or provide other paid leave to the employee as per company policies.

**11. *I don't have an employment contract. Will this be a disadvantage for me if my employer terminates me citing the COVID-19 situation?***

Section 13 of the Employment Act requires all employment contracts to be in writing. Even if you do not have a written employment agreement, you will still be afforded the same protections under the law as with anyone with a written agreement. However, as with any dispute, for the sake of clarity, it is preferable to have a written agreement.

If you have never been provided with a written employment agreement, it may also be worthwhile to check to see if you have been provided with a job description. If your employer has not provided you with a written agreement of employment nor with a job description, notify them that such failure is in violation of Sections 13 and 15 of the Employment Act.

**12. What is my employer's responsibility in disinfecting the workplace if they have reason to believe or actual knowledge that a guest/employee has COVID-19?**

Standard Operating Procedure (SOP) on environmental Management and infection control for COVID-19 in a tourist establishment issued by the Health Protection Agency, provides detailed instructions of the procedures to be followed in disinfection of linen and clothing and cleaning of the rooms of people with suspected or confirmed cases of COVID-19.

Based on the SOP, it is the employer's responsibility to protect the safety of employees and other workers designated and trained to be involved in disinfecting cleaning and waste handling. Employers are also required to ensure that necessary Personal Protective Equipment's (mask, apron, heavy-duty gloves, goggles, gumboots/closed) are available at the establishment. Employers are also required to ensure that necessary Personal Protective Equipment's (mask, apron, heavy-duty gloves, goggles, gumboots/closed) are available at the establishment.

**13. What information is the employer required to share, if one of my colleagues or guests is quarantined?**

If an employee or a guest is suspected or confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace and the measures to be taken by the employees to prevent further transmission. However, employers would not be required to disclose the identity of the quarantined employee or guest to fellow employees for confidentiality reasons.

## We got you covered

The answers to the above questions are produced here for general information purposes only. For specific advice on your legal matters, please contact the following members of our team:



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## **About us**

CTL Strategies LLP is a multi-disciplinary law firm that provides comprehensive legal solutions to both local businesses operating globally and foreign businesses with interests in the Maldives. Our team is comprised of corporate and tax lawyers, tax advisors and chartered accountants.

We are ranked by Asia Law Profiles as a highly recommended firm in the areas of litigation and disputes.

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