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Special Newsflash Japan – Coronavirus (2020/01)

A new coronavirus (temporarily named “2019-nCoV” by the WHO) which was first detected in the Chinese city of Wuhan is now spreading worldwide. The coronavirus has been declared by the WHO as a public health emergency of international concern. Several infections have been reported in Japan and companies now need to address the issue not only from a medical and hygiene perspective, but also in consideration of applicable labor law. We have therefore prepared a short Q&A on some relevant questions you may have in this respect.

Q1: Can I order employees to go on an overseas business trip to China right now?

In general, the employer must use reasonable discretion when exercising its right of instruction. This means that the health and safety of the employee has to be taken into consideration when deciding about the necessity of a business trip. As a guideline, the travel warnings of official sources, such as the Japanese Foreign Ministry - and for Japanese subsidiaries of German companies, also the German Foreign Ministry - can be applied. If the Foreign Ministries of Japan and Germany issue a travel warning, as e.g. in the case of the Chinese province of Hubei, the epicenter of the virus, the order of a business trip to this region would generally be deemed a violation of the employer’s duty of care. Employers should therefore monitor the recommendations and warnings of official sources and, in cases of any doubt, refrain from ordering business trips to such designated areas to the extent possible in consultation with the employee.

Q2: Can I order employees to suspend their work if they are sick?

This depends on the contracted disease of the employee. Article 68 of the Industrial Safety and Health Law stipulates that the employer shall prohibit employees who have contracted contagious diseases and other diseases provided for by the Ordinance of the Ministry of Health, Labor and Welfare (MHLW) to come to their workplace. With effect of **1 February 2020**, the Japanese government has categorized the coronavirus as a designated disease under the Infectious Disease Law which now allows the employer to order an employee infected by the coronavirus to suspend work without the obligation to continue payment of the salary or the statutory leave allowance. For employees infected by other diseases than those designated by the MHLW, e.g. the seasonal type of influenza, unless otherwise stipulated in the rules of employment, the employer generally needs to continue paying the full salary or at least paying the statutory leave allowance when ordering work suspension, although the employee has declared himself/herself to be able to work.

Q3: Can I order employees to work at home if they are sick?

An employer has the duty to care not only for those employees being sick but also for the remaining staff to prevent transmission of any diseases among colleagues. If the rules of employment or the employment agreement with the employee concerned contains provisions regarding remote work, ordering home office work may be feasible. However, if there is no legal framework and the employee does not have any home office equipment or space for working at home, the employer cannot simply order the employee to work from home. In such case, the employer may nonetheless order the employee not to come to the office, but to stay at home for recovery. As stated above, in such event, the employer in principle needs to continue paying the full salary or at least the statutory leave allowance to the employee who has declared himself/herself to be able to work, except in case of a disease listed by the Ordinance of the MHLW or if otherwise provided in the company’s rules of employment.

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Q4: Can I request my employees to disclose which diseases they have?

Health data, such as information about one's diseases, are sensitive personal information which require the express consent of the employee for disclosure. However, some employment agreements provide for the option of the employer to ask an employee to undergo a medical examination by the company's physician. The physician may be required to disclose diseases which may be infectious to the employer in accordance with the Infectious Disease Law. With regard to the coronavirus, the employer may request the infected employee to report whether he/she is infected as otherwise the employer cannot comply with its obligation to prohibit the employee from coming to the workplace under the Industrial Safety and Health Law. To prevent the spreading of other infectious diseases, such as the seasonal type of influenza, at the workplace, the rules of employment need to expressly provide for the employees' obligation to report any potentially severe contagious diseases to the company and to comply with the company's requests in such case in order to entitle the employer to suspend their work or request work at home, etc.

Q5: Am I obligated to provide disinfectants or masks for our staff at the company?

The employer must provide a safe and healthy workplace. What this exactly means is different for every company, depending on its size, nature of business and industry etc. So far, there exists no official guideline by the MHLW regarding specific additional safeguard measures to be taken in light of the coronavirus. If such guideline is being established, it should be observed by the employer. As stated above, it is important to stipulate the necessary items in the rules of employment for being able to react properly in a case of a health-related emergency. This may be a good occasion to revisit your rules of employment to confirm if provisions dealing with health and safety matters at the workplace are sufficiently addressed.

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