



COVID-19 and HR Law in Japan

ARQIS Foreign Law Office
Foreign Law Joint Enterprise with TMI Associates

Agenda

I. Health & Safety

II. Remote Work

III. Leave & Continuation of Salary Payment

IV. Salary Reduction & Redundancy

V. Q&A

I. Health & Safety: Key Obligations

□ Employer has a duty of care for its employees

- Until now, there is **no specific MHLW guideline** for health & safety measures to be taken by employers for COVID-19 (but basic Q&A published), measures depending on industry and work tasks
- **Precautionary measures** to be taken include:
 - Inform employees on COVID-19 hazard and educate on infection prevention
 - Request employees to stay home and report in case of infection, illness symptoms or contact with infected people, and in case of travel to risk areas or contact with people who have travelled to risk areas
 - Ask for limitation of physical business meetings to the extent feasible and encourage audio/video conferences, provide for airing, avoid co-using of equipment as much as possible, keep distance between individuals
 - Ensure that those who are taking care of children whose school is closed or who are pregnant do not need to hesitate if they want to take leaves
 - Promote remote work or shifted work
 - Set up contact point for questions and regularly seek guidance from your company doctor (if any) and/or official sources (MHLW, WHO etc.)

I. Health & Safety: Travel

□ Business Travel

- **Restrict** business travel to affected areas to the extent feasible
- **Official travel warnings** and restrictions (e.g. by the Japanese Foreign Ministry) as a guideline
 - Level 1 (Exercise Caution)
 - Level 2 (Avoid non-essential travel)
 - Level 3 (Avoid all travel)

As of April 6, all countries abroad are ranked Level 2 or above. All EU/EEA = Level 3.

- **Consult with the employee**, evaluate if the travel is necessary and whether the safety can be provided
- **If travel is mission-critical**, monitor official sources regarding immigration procedures and establish strict protocol and guidelines for health & safety of employee

I. Health & Safety: Privacy

□ Employee Privacy

- Health data is deemed “**sensitive personal information**”
- Medical tests require business need and consent of individual
- When staff member reports COVID-19 symptoms, advice them to consult nearest **Health Center** for consultation
- Medical care provider is required to report COVID-19 cases directly to local governor
- **Privacy to be considered** when disclosing information on infection or quarantine to staff
 - Balance between providing safe workplace for staff and privacy of employee
 - e.g. in case of infection or quarantine of staff member, employer should inform staff member of case but without disclosing name (but location, department etc.)

II. Remote Work

- ❑ **No general entitlement** for employees to work remotely unless stipulated in rules of employment or employment agreement
- ❑ **No general obligation** for employees to work remotely unless stipulated in rules of employment or employment agreement
 - But: employment agreement often provide for location “*office or other places as determined by company*” and right of instruction may apply
- ❑ **In case of no** company regulation, setting up of **company policy** for organization of remote work recommended
 - Equipment/Expenses
 - Working Hours
 - Confidentiality
 - Reporting
 - Application of Work Rules
 - Timing when approval of remote work can be revoked

III. Leave & Continuation of Salary Payment

Q: Do we have to continue paying the salary in the following situations?

Reason	Obligation for Continuous Salary Payment
Refusal by employee to work due to fear of COVID-19	In principle, no unless fear is based on reasonable ground
Absence due to Illness	In principle, no unless employee applies for paid sick leave (if any) or annual paid leaves
Absence due to Quarantine requested by authority	No
Absence due to Quarantine ordered by employer	In principle, yes but only 60% mandatory in case of reasonable suspicion of COVID-19 infection
Medical Test / Doctor Visit	In principle, no (but de-facto not uncommon to pay at least for check-ups induced by company during the working hours)
Temporary Closure of business	Yes, but only 60% mandatory if closure by employer was due to “unavoidable reason”

III. Leave & Continuation of Salary Payment

If an employer instructs its employees to **temporarily suspend work** due to a so-called "**unavoidable reason**", the employer needs to pay **60%** of the salary only

Typical Examples for an Unavoidable Reason

1

Reasonable concern that the employee is **infected with COVID-19**

2

(In case of retail business) the **department store** where the employer's store is located is **closed**

3

(In case of manufacturing business) the **material** which is necessary for manufacturing has **not been delivered**

4

When **many employees get infected with COVID-19** and it is **impossible to operate** the business with the remaining employees

5

There is **no work** the employees can engage in due to **cancellation of order/steep decrease in customers**

III. Leave & Continuation of Salary Payment

Q: Can we order employees to use up their paid holidays to stay home?

A: In principle, no. Whether or not to take annual paid leave and its timing is generally at the discretion of the employee.

However, options for limiting such discretion include:

1. Implementation of a Planned Paid Vacation System

- Designated vacation days which will be deducted from the employee's annual paid leave
- 5 days have to remain at the employee's discretion
- Labor-Management agreement with the employee representative required

2. Designation of up to 5 days per leave year by Employer if not used by Employee

- Applicable for employees with 10 or more statutory annual paid leave days who have not taken 5 days off for any leave year starting after 1 April 2019
- Prior consultation with the employee is required

III. Leave & Continuation of Salary Payment

At present, there are **five support measures** in relation to COVID-19 in Japan:

1. **Full salary** (capped at JPY 8,330 per employee and per leave day) if an employee is granted additional paid leave to take care of a child during the period from February 27th to March 31st (planned to be extended until June 30th) due to
 - Closure of the school or
 - The child's being infected with COVID-19

2. **Four-fifth – or nine-tenth if dismissal, etc. is not conducted** – between April 1st and June 30th (capped at JPY 8,330 per employee per day at home) for medium and smaller sized companies if
 - Sales are down by 10% (5% between April 1 and June 30) for at least one month due to COVID-19
 - Temporary instruction to employee to stay at home

3. **Two-thirds of salary** (capped at JPY 8,330 per employee per day at home) for medium and smaller sized companies if
 - Sales are reduced by 10% for three month or more
 - Temporary instruction to employee to stay at home

III. Leave & Continuation of Salary Payment

4. **Half of the expenses** (Up to JPY 1 mil.) which were required by medium or smaller sized companies from February 17th to May 31st to newly start remote working to deal with the outbreak
5. **Three-fourths of the expenses** (Up to JPY 0.5 mil.) which were required by medium or smaller sized companies from February 17th to March 25th to introduce new leaves so as to deal with the outbreak (e.g. fees for lawyer)

The government is considering an expansion of certain subsidies. However, the decision on the details are still pending.

IV. Salary Reduction and Redundancy

Salary Reduction due to COVID-19 effects

- ❑ Salary reduction generally requires the consent of the employee and objective circumstances to find such consent to be provided voluntarily
- ❑ Bonus may be reduced or delayed depending on bonus provision
- ❑ In case of negotiation for voluntary reduction of salary, following points should be considered
 - Due and clear explanation of circumstances and reason for request
 - No retaliation or unfavorable treatment in case of denial
 - Reduction shall be kept at minimum rate and limited to a fixed period
 - e.g. reduction of 5% for all employees for 3 months or 3% for non-managers and 6% for managers for 3 months
 - unified approach to all employees preferable over individual solicitation

IV. Salary Reduction and Redundancy

Redundancy due to COVID-19 effects

- ❑ Courts have established certain precedents for the evaluation of dismissals due to restructuring the company
 - **Economic necessity**
 - Redundancies are unavoidable and necessary
 - **Previous efforts to avoid dismissal**
 - Serious efforts to be considered are e.g. reassigning staff to other job positions, or promoting voluntary redundancies
 - **Reasonable selection**
 - Method of selecting the employees to be dismissed, i.e. whether the selection is done fairly on the basis of objective criteria
 - **Reasonable process**
 - Sufficient consultation with employees and labor unions
- ❑ Strict evaluation, conclusion of mutual settlement agreements recommended.

V. Q&A

Thank you very much for your
attention!

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