

TOPIC:

What are the legal implications in case the lock down is EXTENDED for another month?

What are the rules regarding paying the employees?

CLOSURE AND SUSPENSION OF BUSINESS DUE TO COVID-19

Over the past few days, there has been a rapid increase of COVID-19 infections in the country. In an attempt to contain the pandemic, the government suspended various business operations and implemented strict community quarantine procedures. Several countries have imposed similar lockdown measures to avoid the spread of the virus.

Due to the substantial reduction of economic activity, the International Monetary Fund has declared a global recession. For an average man, this means that businesses will start downsizing, laying off workers, and/or closing a facility or business.

Big businesses may be able to withstand a brief suspension of operations – but micro, small, and medium enterprises will be severely affected. This is further aggravated by the uncertainty of the quarantine’s duration.

Considering the foregoing, business owners are contemplating on whether to continue, suspend, or close their business. Establishments that wish to close or suspend operations should be aware of their responsibilities to the government and their employees. Notices must be submitted to the government’s skeletal workforce or by electronic means, if any. Employees must receive a written notice given personally or thru electronic mail.

Permanent Closure

Businesses choosing to close permanently must cancel their registration with the (1) Department of Trade and Industry (for sole proprietorship) or the Securities and Exchange Commission (for corporations and partnerships), (2) Bureau of Internal Revenue, and (3) their local government office.

Notices must be given to social welfare agencies, such as Philippine Health Insurance Corporation (Philhealth), Home Development Mutual Fund (Pag-IBIG Fund), and Social Security System (SSS).

Their employees must receive at least a 30-day written notice before the closure. An Establishment Termination Report must also be filed with the Department of Labor and Employment (DoLE).

A business may still be considered as active if they failed to comply with these steps. Unpaid taxes and contributions may be assessed plus any corresponding penalties and interest.

Suspension of Business Operations

Businesses may either suspend their whole operations or a specific component. There is no termination of employment during a valid suspension of business operations. There is only a “temporary displacement of employees.”

A business choosing to temporarily suspend operations must notify the above-mentioned government agencies as well. In the absence of any directive instructing otherwise, tax returns should still be filed, and government reports must still be submitted. Additionally, the employees must be notified and a report must still be filed at DoLE.

Remittance of mandatory contributions will be suspended for social welfare agencies but shall resume upon the continuance of operations.

Businesses will be assessed for the unpaid contributions for failure to notify the social welfare institutions. Penalties are also imposed for non-filing of tax returns and government reports.

Reduction of Workforce

Alternatively, businesses may choose to downsize or lay-off some of its employees to avoid further losses. In this regard, a fair and reasonable criteria must be used by the employers in determining which employees will be retrenched or retained. Proof of actual or imminent financial losses must also be proven.

Both the employee and DoLE must be notified at least one month before the intended date of retrenchment. Social welfare agencies must also be notified of the employee’s termination.

Failure to comply with the mandatory procedural notifications may expose businesses to lawsuits by employees for damages, indemnities, and penalties.

Employees

In cases of retrenchment, closures, or cessation of business not due to financial losses, employers are required to provide a separation pay equivalent to at least one (1) month pay or one-half (1/2) month pay for every year of service, whichever is higher. A fraction of six months of work or service is equivalent to a whole year of employment.

Involuntary separation of employees covered by the SSS unemployment insurance may be granted a cash benefit assistance for a maximum period of two months. Affected employees may also avail of the various loan assistance and financial assistance provided by the government.

On the other hand, businesses temporarily suspending operations are not required to pay their employees' salaries under the principle of "no work, no pay." However, after the resumption of normal business operations, the affected employees should either be recalled back to work or, if not possible, permanently separated and paid the appropriate separation pay.

Lastly, businesses allowed to operate during the enhanced community quarantine cannot impose disciplinary actions on employees refusing to work due to compelling health and safety concerns. The principle of "no work, no pay" shall apply. Nevertheless, employees may use their existing leave credits under their company's policy or as stipulated in their collective bargaining agreement, if any.

Final Word

A longer suspension of business operation means deeper economic loss - but an increase in lives saved. The government will have to choose between lives and economics. Businesses will have to decide between taking a hit or sacrificing their employees.

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