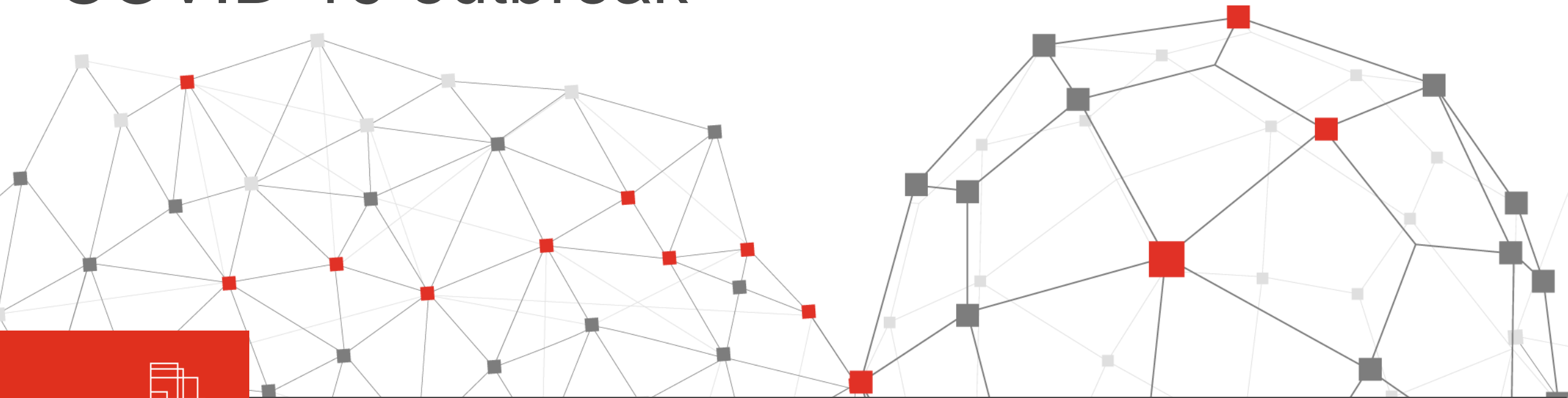


COVID-19

Guidance on applying labour laws during COVID-19 outbreak



PwC Legal Vietnam NewsBrief

30 March 2020

On 25 March, the Ministry of Labour, War Invalids and Social Affairs (MOLISA) issued Official Letter No. 1064/LĐTBXH-QHLĐTL to guide salary and other payments during work stoppages due to the Covid-19 pandemic.

In this Official Letter, MOLISA specifies labour related difficulties which companies may face, including:

- i. companies facing difficulties in sourcing raw materials and selling products, thus not having enough work for their employees during the pandemic.
- ii. employees must be isolated/quarantined at the request of the authorities;
- iii. foreign employees have not been able to return to Vietnam to work;
- iv. employees have to stop working because the companies or a division thereof cannot operate due to a lack of work force [as a result of (ii) and (iii)];



In view of the above, MOLISA guides as follows:

- Depending on the reasons for the work stoppage (i.e. due to the fault of the employer or of the employee, or due to objective reasons), payment of salary during the work suspension can be considered.
- If an employee has to stop working due to the direct impact of the Covid-19 pandemic, such as in the cases of (ii), (iii) and (iv) listed above, the two parties must mutually agree on the salary level during the work suspension, but the salary must not be lower than the applicable regional minimum wage.

Please refer to this link for details of regional minimum wages: <https://www.pwc.com/vn/en/publications/2019/pwc-vietnam-legal-newsbrief-decree-90.pdf>

- If a company faces difficulties as stated in (i) above, it can either:
 - temporarily transfer the concerned employees to other jobs in accordance with Article 31 of the Labour Code. Article 31 essentially provides that the temporary transfer period must not be more than an accumulated 60 working days per year, unless the employee otherwise consents; and that if the wage rate of the new job is less than that of the previous job, the employee is entitled to receive the previous wage for 30 working days before receiving the new wage which must be at least 85% of the previous wage, and not less than the applicable regional minimum wage.
 - If the stoppage is prolonged such that it jeopardises the solvency of a company, then the parties may agree to suspend labour contracts. Currently the Labour Code does not provide regulations for labour contract suspension by mutual agreement, except that within 15 days from expiry of the term of suspension, the employee must attend the work place and the employer must take the employee back in to work.
 - If a company has to curtail production, it can consider terminating labour contracts or retrenching employees (in accordance with Article 38 and Article 44 of the Labour Code).

To terminate labour contracts, a company must comply with advance notice requirements, i.e. 45 days for indefinite term contracts and 30 days for definite term contracts, and must pay severance allowance (where applicable).

If retrenchment is considered as an option, the company must firstly formulate and implement a labour usage plan. If the company proceeds with retrenchment, it must consult the trade union, make 30-day advance notice to the local labour authority and pay retrenchment allowance (where applicable) to the retrenched employees.

Contact us

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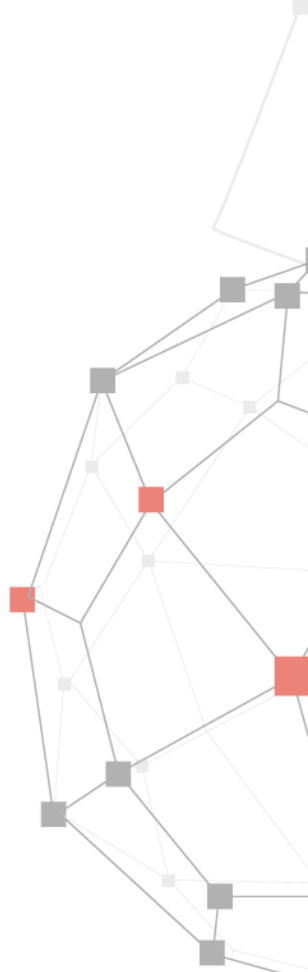
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