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WHO PAYS SELF-QUARANTINED EMPLOYEES? CAMBODIAN LABOR LAW FACING THE COVID-19 PANDEMIC

If an employee falls sick, who pay the salary?

Sickness is a paid leave permitted by the Labor Law (Article 169). Therefore, during sickness, employer needs to pay the salary of his employee. However, the Labor Law does not expressly specify the implications of long leave or hospitalization of an employee (from one to six months). Based on the Ministry of Labor's internal work rules model which is a standard rule followed by the labor inspectors, an employee is entitled to the following during long sick leave or hospitalization:

- From one to two months: full salary
- From two to four months: 50% of the salary
- From four to six months: no salary but keep the employee's position
- More than six months: employer may consider the dismissal.

What if an employee wants to stay home to take care of children or school closed or child is sick?

The employee may either take his/her annual leave (18 days per year or 1.5 days per month) or special leave of up to 7 days per year (Articles 169 and 171 of Labor Law). Special leave may be granted by the employer during the event directly affecting the worker's immediate family.

Highlights of this note

- ▶ If an employee falls sick, who pay the salary?
- ▶ What if an employee wants to stay home to take care of children or school closed or child is sick?
- ▶ What if public transport closed and employee cannot get to work?
- ▶ Is an employee entitled to work from home?
- ▶ If an employee self-quarantines, does this count as annual leave, normal working day or leave of absence?
- ▶ Can an employer oblige an employee to self-quarantine? Can employer terminate the employee for refusing?
- ▶ If an employer is informed one employee tests positive, or has a test pending, what must or may the employer tell the other employees?

Moreover, any untaken annual leave will be used to offset with the taken special leave. If all annual leaves are used up, the employer can ask for employee to make up the time requested for special leave granted.

What if public transport closed and employee cannot get to work?

This specific issue is not regulated in the Labor Law. However, this event prevents employees from performing their duties, it may be considered as an event causing a suspension of employment contract. In this case, the main obligations of the parties are suspended: employer is not required to pay the salary unless otherwise specified in the individual employment contract, collective bargaining agreement or internal work rules/employees' manual of the employer that require employer to pay employees.

Alternatively, this may be settled by mutual arrangement between employer and employees. Employer may ask employees to work from home.

Is an employee entitled to work from home?

Generally, there is no right for an employee to work remotely. It is specifically regulated in the Labor law, but this falls under the power of control, direction, supervision of employer. Therefore, employer has two options: whether to ask employees to work from home or to suspend the contract without salary payment (Article 71).

If an employee self-quarantines, does this count as annual leave, normal working day or leave of absence?

This depends on specific circumstance of whether or not the employee works during his/her self-quarantine:

- If s/he works as usual with agreement of the employer, nothing is changed and the quarantine is normal working days and salary must be paid.
- If s/he does not work, but has asked and taken their paid annual leave, the salary must be paid as usual.
- If s/he does not work and has not taken annual leave, this will be considered as leave without pay.

Can an employer oblige an employee to self-quarantine? Can employer terminate the employee for refusing?

Yes, an employer can oblige an employee to self-quarantine for the reason of safety of other employees. Article 83(B)(3) of Labor Law provides that any infraction to disciplinary, safety and health regulations committed by employees will be serious misconduct leaving to termination without prior

notice. Therefore, employer can terminate the employee for refusing the self-quarantine based on Article 83(B)(3).

If an employer is informed one employee tests positive, or has a test pending, what must or may the employer tell the other employees?

This falls under the employer's direction, management and supervision. The employer may tell other employees to take COVID-19 test and if positive, to be self-quarantine for 14 days for others' safety.

In addition, Ministry of Labour and Vocational Training issued an Instruction on Preventative Measures Against COVID-19 at Enterprises (28 January 2020) and requires directors and workers to implement this instruction (e.g. wash your hands regularly) in a proper and highly effective manner.



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