



The Return-To-Work Checklist: Focus on Labor

Philippine government agencies continue to issue additional and more specific guidelines on dealing with business continuity concerns, in light of more enterprises being able to resume operations under the Modified Enhanced Community Quarantine (MECQ), and more areas now being under the less restrictive General Community Quarantine (GCQ).

This briefing covers the following more recent advisories:

1. Department of Labor and Employment (DOLE) Labor Advisory No. 17 Series of 2020 dated May 16, 2020 at https://www.dole.gov.ph/php_assets/uploads/2020/05/Labor-Advisory-No.-17-20.pdf;
2. DOLE Labor Advisory No. 18 Series of 2020 dated May 18, 2020 at https://www.dole.gov.ph/php_assets/uploads/2020/05/Labor-Advisory-No.-18-20.pdf; and
3. Department of Health (DOH) Department Memorandum No. 2020-0220 dated May 11, 2020 at <https://www.doh.gov.ph/sites/default/files/health-update/dm2020-0220.pdf>.

	Item	Comment
A	Working Arrangements with Employees	
1	Are businesses required to adopt work-from-home or telecommuting arrangements?	<p>No, but under DOLE Labor Advisory No. 17, businesses are “highly encouraged” to adopt work-from-home or implement telecommuting arrangements. However, employees under these arrangements “must be provided adequate support to perform his or her duties.”</p> <p>Notes: These arrangements should be formulated in light of the DOH Guidelines on the Risk-Based Public Health Standards for COVID-19 Mitigation, which consider alternative work arrangements as interventions to “reduce contact” between persons in the workplace and to “reduce exposure of vulnerable individuals (such as those with underlying health conditions) to prevent infection.” The DOH guidelines also limit the maximum number of people on site because physical distancing measures should be implemented in the workplace.</p>

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		<p>Businesses should also comply with the rules on operational capacity and skeleton workforce. Certain businesses are allowed to operate at full operational capacity but subject to safety protocols. Other businesses may operate at a maximum of a maximum of 50% operational capacity or with a skeleton workforce. “Operational capacity” refers to the maximum number of employees “permitted or required to physically report to work on-site,” while “skeleton workforce” refers to “the operational capacity which utilizes the smallest number of people needed for a business or organization to maintain its basic functions.”</p> <p>The DTI-DOLE Guidelines on Workplace Prevention and Control also encourage alternative work arrangements and physical distancing measures in the office in order to “minimize contact rate.”</p> <p>Please refer to the following for more information:</p> <p>DOLE Labor Advisory No. 17, Series of 2020 at https://www.dole.gov.ph/php_assets/uploads/2020/05/Labor-Advisory-No.-17-20.pdf.</p> <p>DOH Administrative Order No. 2020-0015 at: https://www.doh.gov.ph/sites/default/files/health-update/ao2020-0015.pdf.</p> <p>Omnibus Guidelines on the Implementation of Community Quarantine in the Philippines at: https://www.officialgazette.gov.ph/downloads/2020/05may/20200515-omnibus-guidelines-on-the-implementation-of-community-quarantine-in-the-philippines.pdf.</p> <p>DTI and DOLE Interim Guidelines on Workplace Prevention and Control of COVID-19 at: https://www.dole.gov.ph/news/dti-and-dole-interim-guidelines-on-workplace-prevention-and-control-of-covid-19/.</p> <p>DOLE Department Order No. 202, Series of 2019 on telecommuting at: https://www.dole.gov.ph/php_assets/uploads/2019/04/DO-202-19-Implementing-Rules-and-Reulations-of-Republic-Act-No.-11165-otherwise-known-as-the-Telecommuting-Act.pdf</p>
2	What does “adequate support” mean?	<p>The DOLE Advisory does not provide additional details. In the context of the advisory, “adequate support” should refer to any support needed by employees to be able to perform from home the services that the employer expects employees to provide. This may refer to access to appropriate devices or connectivity. Again, this will depend on the services that the employee has been asked to perform from home.</p> <p>Please refer to Labor Advisory No. 18, Series of 2020 at https://www.dole.gov.ph/php_assets/uploads/2020/05/Labor-Advisory-No.-18-20.pdf.</p>

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3	<p>What are the alternative work schemes that an employer may adopt when it wants to resume operations?</p>	<p>Employers may adopt any or a combination of the following alternative work schemes:</p> <ul style="list-style-type: none"> a. Transfer of employees to another branch or outlet; b. Assignment of employees to another function or position in the same or other branch or outlet of the same employer; c. Reduction of normal workdays per day or week; d. Job rotation alternately providing workers with work within the workweek or within the month; e. Partial closure of the establishment; and f. Other feasible work arrangements. <p>These arrangements are “temporary in nature” and shall be adopted “as long as the Public Health Crisis exists.”</p> <p>Please refer to DOLE Labor Advisory No. 17, Series of 2020 at https://www.dole.gov.ph/php_assets/uploads/2020/05/Labor-Advisory-No.-17-20.pdf.</p>
4	<p>May the employer adjust the employees’ wages and wage-related benefits?</p>	<p>Yes. Employers and employees may agree in writing to “temporarily adjust employees’ wage and wage-related benefits” provided in the employment contract, company policy, or collective bargaining agreement (CBA).</p> <p>These adjustments “should not exceed six months,” unless the parties agree on a different period in the CBA. After such period, the employers and employees should review their agreement and they may renew the same.</p> <p>Please refer to DOLE Labor Advisory No. 17, Series of 2020 at https://www.dole.gov.ph/php_assets/uploads/2020/05/Labor-Advisory-No.-17-20.pdf.</p>
5	<p>What if the parties don’t reach an agreement?</p>	<p>Without an agreement, the parties will need to rely on what the law provides.</p> <p>The employer, for example, may consider putting the employee/s on forced leave with or without pay.</p> <p>If any of the authorized causes in the Labor Code are present due to the business situation, the employer may consider terminating the employment relationship.</p>

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		<p>Under the Labor Code, the authorized causes for termination of employment are:</p> <ul style="list-style-type: none"> a. Installation of labor-saving devices; b. Redundancy; c. Retrenchment to prevent losses; and d. Closure or cessation of operations. <p>Please refer to DOLE Labor Advisory No. 9, Series of 2020 at https://www.dole.gov.ph/wp-content/uploads/2020/03/Labor-Advisory-No.-09-20-Guidelines-on-the-Implementation-of-Flexible-Work-Arrangements-as-Remedial-Measure-due-to-the-Ongoing-Outbreak-of-Coronavirus-Disease-2019-COVID-19.pdf.</p>
6	<p>What are the employer's obligations with respect to separated employees?</p>	<p>Employees who have been separated from employment due to authorized causes shall be entitled to their final pay to be released within 30 days from the date of separation or termination of employment, without prejudice to other benefits provided by law, company policy, or a collective bargaining agreement.</p> <p>Please refer to Labor Advisory No. 17, Series of 2020 at https://www.dole.gov.ph/php_assets/uploads/2020/05/Labor-Advisory-No.-17-20.pdf.</p> <p>For more information on the time of payment or release of final pay, please refer to Labor Advisory No. 06, Series of 2020 at: https://www.dole.gov.ph/news/labor-advisory-no-06-20-guidelines-on-the-payment-of-final-pay-and-issuance-of-certificate-of-emplo/.</p>
7	<p>Are there reportorial requirements in relation to alternative work schemes that employers should comply with?</p>	<p>Employers should report the alternative work schemes adopted; submit duly certified copies of all employment agreements or work schemes; and/or accomplish establishment termination reports to the DOLE.</p> <p>Please refer to Labor Advisory No. 17, Series of 2020 at https://www.dole.gov.ph/php_assets/uploads/2020/05/Labor-Advisory-No.-17-20.pdf.</p>

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B	Testing, Screening, and Other COVID-19 Prevention and Control Measures	
1	Should employees be tested?	No. Testing is not mandatory.
2	Who should shoulder the costs of COVID-19 prevention and control measures?	<p>The employer should shoulder these costs.</p> <p>Under DOLE Labor Advisory No. 18, “COVID-19 Prevention and Control Measures” include, but are not limited to, “testing, disinfection facilities, hand sanitizers, PPE, signages, and proper orientation and training of workers including [information, education, and communication] IEC materials on COVID-19.”</p> <p>For “contracts for construction projects and for security, janitorial and other services”, the “principals or clients of the construction / service contractor” should bear the cost of COVID-19 prevention and control measures.</p> <p>No cost related or incidental to COVID-19 prevention and control measures should be charged, directly or indirectly, to the workers.</p> <p>Please refer to Labor Advisory No. 18, Series of 2020 at https://www.dole.gov.ph/php_assets/uploads/2020/05/Labor-Advisory-No.-18-20.pdf.</p> <p>Under DOH Guidelines, the employer will shoulder the costs of testing to the extent that such costs will not be fully covered by PhilHealth.</p> <p>For more information, please refer to DOH Department Memorandum No. 2020-0220 at: https://www.doh.gov.ph/sites/default/files/health-update/dm2020-0220.pdf</p>
3	How shall returning employees be screened?	<p>Employees physically reporting back for work shall be screened for COVID-19 symptoms (e.g., fever, cough, colds, other respiratory symptoms). They will also be asked for their relevant travel history or “exposure within the last 14 days.”</p> <p>The following exposures should have happened 2 days before or within 14 days from onset of symptoms of a confirmed or probable case:</p> <ul style="list-style-type: none"> ○ Face-to-face contact with a confirmed case within 1 meter and for more than 15 minutes

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		<ul style="list-style-type: none"> ○ Direct physical contact with a confirmed case ○ Direct care for a patient with probable or confirmed COVID-19 disease without using proper personal protective equipment <p>a. For symptomatic employees with relevant travel history or exposure:</p> <ul style="list-style-type: none"> • If symptomatic on the date of work resumption, they will not be permitted to physically report for work and must consult their doctor • If symptomatic within the last 14 days before the date of work resumption, a Certificate of Quarantine Completion will be required <p>b. For asymptomatic employees within the last 14 days before the date of work resumption, they will be allowed to return to work.</p> <p>In addition to screening returning employees, employers must also “establish [a] referral network for employees who will develop symptoms.”</p> <p>For more information, please refer to DOH Department Memorandum No. 2020-0220 at: https://www.doh.gov.ph/sites/default/files/health-update/dm2020-0220.pdf</p>
4	How will asymptomatic returning employees be tested?	<p>The employer may avail of any of the two tests:</p> <ul style="list-style-type: none"> a. Reverse Transcription–Polymerase Chain Reaction (RT-PCR) b. FDA-Approved Rapid Antibody-Based Tests <p>The results of either test will determine if the employee can continue to work in the employer’s premises or if the employee would have to be isolated and further tested.</p> <p>Employers are also required to submit the results of tests to the DOH. For more information, please refer to DOH Department Memorandum No. 2020-0220 at: https://www.doh.gov.ph/sites/default/files/health-update/dm2020-0220.pdf</p>

	Item	Comment
C	Business Continuity Plan	
	<p>The DOH requires businesses to have a “business continuity plan.” What is that?</p>	<p>According to the Department of Trade and Industry (DTI), it as a “documented procedure that guides an organization to respond, recover, resume and restore itself to a pre-defined level of operation following a disruption.”</p> <p>One of the key aspects of a business continuity plan is the implementation of health protocols that will prevent the spread of COVID-19. The DOH Guidelines on the Risk-Based Public Health Standards for COVID-19 Mitigation (https://www.doh.gov.ph/sites/default/files/health-update/ao2020-0015.pdf) provide for the minimum public health standards applicable for workplaces such as alternative work arrangements for vulnerable employees and frequent handwashing and disinfection of surfaces. The DTI and DOLE Interim Guidelines (https://www.dole.gov.ph/php_assets/uploads/2020/05/DTI_and_DOLE_InterimGuidelinesonWorkplacePreventionandControlofCOVID19__3.pdf) also outline measures that may be taken in workplaces and the duties imposed upon employers and employees to reduce the transmission of COVID-19.</p> <p>To facilitate compliance with the business continuity plan, DOH Guidelines also prescribes the imposition of social support. “This includes appropriate policies on sick leave and medical insurance coverage to accommodate the COVID-19 situation, and pay allowance from the employer.”</p> <p>For more information on what constitutes a business continuity plan, please refer to DTI and Bureau of Philippine Standards (DTI-BPS) Guide on Business Continuity Planning amidst COVID-19 at: http://www.bps.dti.gov.ph/index.php/component/edocman/7-laws-and-issuances/69-research-materials</p>

For more information about the legal issuances discussed in this briefing, please contact -

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This bulletin contains a summary of the legal issuances discussed above. It was prepared by SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) to update its clients about recent legal developments.

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