



**PERSATUAN EJEN-EJEN PELANCONGAN DAN PENGEMBARAAN MALAYSIA  
MALAYSIAN ASSOCIATION OF TOUR AND TRAVEL AGENTS**

## **MATTA COVID-19 Frequently Asked Questions (FAQ) – Employment, Financial Support, Cancellations & Refunds**

### **IMPORTANT:**

**These Frequently Asked Questions serves to act only as a reference and general advice to the MATTA members and not intended to substitute or be taken as professional and/or legal advice. It is intended to present an overall view on the employment law issues arising from the Movement Control Order due to the COVID-19 outbreak. Employers are responsible to seek the relevant professional advice from their tax, accounting, legal or other advisers and not rely solely on this Frequently Asked Questions. Any use or reliance by the employers or any party on the information set out in this Frequently Asked Questions or any part thereof shall be entirely at your own risk and MATTA shall have no responsibility whatsoever in relation to the same. This document is intended only for the reference of our members and is not to be distributed or circulated to any other person without our prior written permission.**

30 March 2020

## **MATTA COVID-19 Frequently Asked Questions (FAQ) – Employment, Financial Support, Cancellations & Refunds**

### **Employment**

IMPORTANT: Although the economy and the travel and tour industry are faced with unprecedented challenges, the law as it stands will generally apply during the MCO and thereafter. Employment contracts are still protected by both contract law and the law of industrial relations. Cost-cutting measures such as pay cuts, forced leave, adjusted work days should only be undertaken in consultation with employees as a means of avoiding retrenchment or lay-offs. Industrial law and practice still recognise the right of the employer to retrench where business circumstances justify such retrenchment provided that the retrenchment is carried out in good faith and in accordance with recognised principles.

- 1. We have been running at a loss since early 2020 and the situation has been made worse due to the MCO. How is the government helping us? How are we going to pay overheads and salaries?**

MATTA is in constant contact and consultation with MOTAC and the Government to highlight the concerns and plights of our members. Members are urged to bring their issues and concerns to our attention in order that we can try to assist bridging these issues and concerns to the relevant powers.

Please inform yourself of the various aid and relief initiatives of the Government, Bank Negara Malaysia and commercial banks as announced from time to time. MATTA has compiled these aid initiatives and these can be accessed at:

1. <https://www.matta.org.my/article/31296-economic-stimulus-package-no1>
2. <https://www.matta.org.my/article/31756-economic-stimulus-package-no-2>
3. <https://www.matta.org.my/article/87739-bank-negara-malaysia-additional-measures-to-further-support-smes-and-individuals-affected-by-the-covid-19-outbreak>
4. <https://www.matta.org.my/article/86631-bank-negara-malaysia-measures-to-assist-individuals-smes-and-corporates-affected-by-covid-19>
5. <https://www.matta.org.my/article/37541-financial-institutions-financial-relief-by-malaysian-banking-sector>

- 2. Since the extension of the MCO I am unable to pay salaries and am considering retrenching staff and closing the company. How do I go about doing this?**

Companies are allowed to reorganise their business in any manner for the purpose of economy or business efficiency and a company is allowed to lay off or retrench workers provided it is in good faith. The process requires that:-

- (a) before any decision or announcement is made to the employee, the company is advised to consult all employees in respect of the company's plan to carry out a retrenchment exercise. Any decision and/or notice of retrenchment issued without prior consultation would raise a challenge on the validity of the retrenchment exercise;
- (b) to give written notice of retrenchment to employees detailing the retrenchment benefits entitled;
- (c) to ensure that the retrenchment is carried out in accordance with principles such as "last in, first out"; and
- (d) to submit the Employment (Retrenchment) Notification Form to the nearest Department of Labour at least 30 days from the date of retrenchment.

In the event a retrenchment exercise is carried out, the following shall apply in respect of employees with salary of RM2,000 per month or below or manual labourers (i.e. employees who are under the purview of the Employment Act 1955 ("EA")):-

(a) Notice of Retrenchment

A notice of retrenchment must be given to the employees as follows:-

- i. notice of not less than 4 weeks period for employee working for less than 2 years;
- ii. notice of not less than 6 weeks period for employee working for more than 2 years but less than 5 years;
- iii. notice of not less than 8 weeks period for employee working for 5 years or more.

(b) Payment of Retrenchment Benefit

Employee under a continuous contract of service for a period of not less than 12 months are entitled to retrenchment benefit to be calculated as follows:-

- i. 10 days' salary for every year of employment if the staff has been employed for less than 2 years;
- ii. 15 days' salary for every year of employment if the staff has been employed for more than 2 years but less than 5 years;
- iii. 20 days' salary for every year of employment if the staff has been employed for 5 years or more;

and pro-rata as respect an incomplete year, calculated to the nearest month.

For other employees not governed by the EA, in the event their employment contract provides for retrenchment benefits, the company is obligated to make the payment accordingly.

If no provisions for the same is provided in the employment contract, in line with Code of Conduct for Industrial Harmony (“Code of Conduct”), the company is still required to pay the employees reasonable retrenchment benefits. However usually the provisions under the EA is used as a guide.

Employees who have been laid off/retrenched should be informed that if they are registered and contributing to the Employment Insurance System (“EIS”) they are entitled to claim certain benefits.

Please note that employers that participate in the Prihatin Stimulus Package’s “Program Subsidi Upah” are not permitted to carry out any retrenchment exercise for a period of 3 months after implementation of the Program.

**MATTA advises members to seek legal advice from lawyers or human resource practitioners to ensure that the retrenchment exercise is carried out in accordance with the requirements of law.**

**3. Do we need to issue letters to staff going on unpaid leave?**

The general position under law is that a company cannot force its employee to go on unpaid leave.

In the event an employee agrees and the company implements unpaid leave with its employees, please issue a formal notice to the staff that they are on no-pay leave and state the duration of such no-pay leave.

**4. I am going to retrench some of my employees. Do we need to issue letters with period of notice and salary compensation?**

Yes, please refer to FAQ 2.

**5. Are employers allowed to impose unpaid leave on employees during the MCO? If yes, how many days are we legally allowed to impose?**

The general position under law is that a company cannot force its employee to go on unpaid leave. In the event an employee agrees, the maximum period is 6 months.

Unpaid leave cannot be imposed for the duration of the MCO unless the employee agrees to the same.

**6. Is it lawful to impose forced unpaid leave on employees on minimum wage (i.e. RM 1,200 as determined by the Ministry of Human Resources)?**

Unpaid leave cannot be imposed on an employee unless the employee agrees to the same.

A company is permitted to take such measures as it deems reasonable and necessary in light of its financial situation to avoid or minimise reduction of workforce. If a company considers implementing unpaid leave as a necessary measure to avoid or minimise retrenchment, it should consult the employees and seek their agreement to the unpaid leave as a means of avoiding a retrenchment exercise.

**7. According to the Labour laws, are we allowed to impose unpaid leave due to there being no sales since March?**

Please refer to FAQ 6.

**8. If we decided to cease business can we terminate staff without compensate them?**

No, a company is required by law to pay termination benefits to all employees that fall within the purview of the EA.

For other employees that do not fall under the purview of the EA, although no statutory provision provides for obligation by a company to pay termination benefits, in line with Code of Conduct for Industrial Harmony, a company would still be required to pay the employees reasonable termination benefits.

Please refer to FAQ 2.

**9. Is it legal for an employer affected by COVID-19 to cut the salary of staff by reducing the number of working days?**

A reduction in the number of working days and a resulting cut in the salary is a variation of the employment contract and would require the agreement of the employee.

**10. Can an employer negotiate with employees to reduce the salary during the MCO period?**

A company is permitted to take such measures as it deems reasonable and necessary in light of its financial situation to avoid or minimise reduction of workforce. If a company considers implementing pay cuts as a necessary measure to avoid or minimise retrenchment, it is allowed to take such measures in consultation and consensus with its employees.

All employment contracts whether governed by the EA i.e. employees earning RM2,000.00 and below per month and/or for employees not governed by the EA earning above RM2000.00, can be varied by mutual agreement. Companies should approach their employees with a proposal for a pay-cut and payment of partial salary for a specific agreed period and seek to get their agreement on this.

Once an agreement has been reached it is advisable for the employer to issue a letter to confirm this and for it to be accepted by the employee to document the variation of the contract of employment.

However, please note that where an employee objects to accept a pay cut, he/she may seek to lodge a complaint with the Labour Courts.

When faced with employees that are not agreeable to a pay cut or other attempts by the Company to implement cost-cutting measures, this may leave the Company with no option but to consider a lay off/retrenchment exercise.

Please refer to FAQ 2.

- 11. The law says I have to pay staff salaries during the MCO and I have utilized all my funds including my savings on the expectation that the industry will recover. I do agree with the law but disagree that it applies to all types of business; the most affected are the travel agencies, hotels and airlines – employees have no jobs to do from home and we do not see business recovering for a long time yet.**

Generally, the provisions of law apply across the board to all industries. However, a company is allowed to assess its own financial position and take necessary measures as it deems reasonable for reasons of its financial situation or business efficiency. Please refer to FAQ 2 and FAQ 10.

- 12. Can we claim the RM 600 from EIS for April 2020 with an unpaid leave notice to staff starting from 1/4/2020? What are the procedures to applying for claims under EIS by Socso/PERKESO if we were to give our employees no pay leave?**

This aid appears to be available only to those issued with no-pay leave notice issued beginning 1 March 2020 for a minimum of 30 days. This Employee Retention Program commenced for private sector employees (with salary of RM4,000.00 per month and below) who are registered and contributing to the Employment Insurance System (“EIS”) and who have been instructed to be on unpaid leave from 1 March 2020 onwards (“no-pay leave notice”). The period of assistance is one (1) to six (6) months depending on the no-pay leave notice. Please visit [https://www.perkeso.gov.my/images/erp/BORANG\\_ERPC19\\_Edited\\_22\\_Mac\\_V4.pdf](https://www.perkeso.gov.my/images/erp/BORANG_ERPC19_Edited_22_Mac_V4.pdf) for the relevant form. Completed forms shall be emailed to [erpc19@perkeso.gov.my](mailto:erpc19@perkeso.gov.my).

- 13. Is the minimum wage still applicable during this period?**

Yes, it remains in effect until formally revoked or suspended. However, companies can undertake various measure to reorganise their business and wage structure due to economic or financial reasons provided that it is done in good faith and with the agreement of the employee.

- 14. What is the process for laying off a staff? Can this only be done after the MOC or can notice be served during this period?**

A company can undertake a retrenchment exercise at any time provided it complies with the processes and requirements. Kindly refer to FAQ 2.

- 15. Who do we write to when the situation improves and we decide to recall our employees back to full time employment and to cancel the EIS claim?**

In the event you wish to recall the employees before the expiry of the no-pay leave notice period, please inform PERKESO directly at [perkeso@perkeso.gov.my](mailto:perkeso@perkeso.gov.my).

- 16. Can the statutory payments to KWSP, Perkeso & EIS be ceased /deferred for both employers and employees?**

Please refer to the Prihatin Stimulus Package presented on 27 March 2020. Companies may contact EPF/KWSP directly to request for a 6 months deferment or rescheduling of contributions.



## Financial Support

- 17. We (both my employees and I) are in desperate need of financial aid due to extreme losses suffered as a result of COVID-19. Is the government providing any financial support or incentives?**

Please refer to the Prihatin Stimulus Package presented on 27 March 2020.

Companies may contact EPF/KWSP directly to request for a 6 months deferment or rescheduling of contributions.

The Prihatin Stimulus Package also introduced a “Program Subsidi Upah” to promote employee retention. Under this program, the Government will provide wage support of RM600.00 per month for employees that earn less than RM4,000.00 per month to employers who suffer decrease in revenue of more than 50% since 1 January 2020. This support will be for a period of 3 months. Employers under this program will not be permitted to carry out any retrenchment exercise, implement any forced unpaid leave or pay cuts for a period of 3 months after implementation of the Program.

Please also refer to FAQ 1.

## Others

- 18. Are my employees exempted from the MCO especially if they oversee critical operations in my business?**

The Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 (“PCID Regulations”) do not list the travel sector as Essential Services and as such there is no exemption from the control of movement for employers in the travel sector attending to work matters. For any other special purpose not listed in the PCID Regulations, formal permission will be required from the Director-General of Health.

UPDATE: The Kementerian Sumber Manusia has allowed two persons from a company/firm’s finance/human resource department to be present at their workplace to attend to and facilitate matters relating to payroll for one day, either 31 March 2020 or 1 April 2020. Employers are required to prepare an authority/permission letter for the said workers which letter shall contain full name, NRIC number and phone number of the approving officer. The authorised employees are required to produce the said authority letter to facilitate their movement to relevant authorities if so requested.

- 19. Many are demanding for refunds when we have already paid third-party service providers such as the airlines, hotels and ground handlers. The airlines do not issue refunds and some airlines are refusing to allow extensions more than 6 months! What are our options?**

Cancellation policies are governed by the Tourism Industry (Tour Operating Business and Travel Agency Business) Regulations 1992 (“Regulations”). Where payments have been made to hotels and airlines and there is no refund from these parties, MATTA is of the view that the customers must be bound by the hotel and airline policy in respect of cancellation and cannot insist on full refunds.

20. **Customers are insisting on refunds even if we allow them to postpone their travels till 2021. Do we have the right NOT to entertain these requests for refunds if their travel dates are not in within the MCO period?**

No, you cannot refuse to entertain refund requests. Refund requests are governed by the terms of your contract with the customer and the Regulations. Cancellation charges must be paid in accordance with the Fourth Schedule of the Regulations. However, where payments have been made to hotels and airlines and there is no refund from these parties, please refer to FAQ 19.

\*Remark: For further assistance, you may contact us at [crisis.hotline@matta.org.my](mailto:crisis.hotline@matta.org.my)

