

NEWSLETTER

Manuela António - 安文娜 大律師及公證員 | *Lawyers and Notaries*

5 FEBRUARY 2020

Dear all,

In face of the recent measures being taken by the Macau Government for prevention of coronavirus and in anticipation of the possibility of employees based in Zhuhai being prevented to come to Macau to work, it is important to be aware of the legal framework applicable to the case.

First of all, please note that currently there are no guidelines issued by the Macau Government in respect of this matter. As such, the below advice may have to be adjusted in the coming days, subject to the measures adopted by the Macau Government.

Bearing the above in mind, in case workers based in Zhuhai are barred, by order of the Macau Government, from crossing the border to come to Macau to work, the following legal framework shall apply:

Macau residents

In case of border closure, the absence from work shall be considered justified, for force majeure reasons, non-attributable to the worker (article 50. Par. 2 subpar. 2) of the Labour Relations Law).

As such, Macau residents will be entitled to not show up for work until the border closure ceases. Although their absence is justified, employees will not be entitled to remuneration while the absence lasts.

In case the closure of borders lasts for an extended period of time (or for an indefinite period), the possibility of the employment agreement lapsing may be considered, due to the fact that it is impossible for the worker to perform his/her duties (article 73 par. 1 subpar. 2) of the Labour Relations Law). In this event, no compensation shall be due to the employee for termination of the employment agreement.

However, at this stage, it is still too early to determine whether it would be reasonable to consider that the employment relationship has lapsed, specially taking into account that there are no known measures adopted by the Macau Government in this respect.

LABOUR MATTERS

“In case of border closure, the absence from work shall be considered justified, for force majeure reasons, non-attributable to the worker (article 50. Par. 2 subpar. 2) of the Labour Relations Law).

As such, Macau residents will be entitled to not show up for work until the border closure ceases. Although their absence is justified, employees will not be entitled to remuneration while the absence lasts.”

Finally, please note that the above does not prevent the employer and the employee from reaching alternative arrangements (e.g. negotiating a period of unpaid leave; arranging for the annual leave of the employee to be taken during the border closure period; or providing the employees with accommodation in Macau) or negotiating some kind of settlement/compensation for early termination of the employment agreement.

Non-resident workers

As with Macau resident workers, in case of border closure, the absence from work by Non-resident workers shall be considered justified, for force majeure reasons, non-attributable to the worker (article 50. Par. 2 subpar. 2) of the Labour Relations Law).

As such, Non-resident workers that live in Zhuhai will be entitled to not show up for work until the border closure ceases. Although their absence is justified, employees will not be entitled to remuneration while the absence lasts.

In addition, the employer may elect not to renew the work permit of Non-resident workers whose work permit reaches its term during the period of border closure.

With respect to the lapsing of the employment agreement in case the closure of borders lasts for an extended period of time (or for an indefinite period), due to the fact that it is impossible for the worker to perform his/her duties (article 73 par. 1 subpar. 2) of the Labour Relations Law), it is our view that it is still too early to determine whether such action would be justified.

Nevertheless, it should be noted that the hiring of Non-resident workers is subject to stricter requirements than those imposed on the hiring of resident workers and is subject to effective limitations (such as the imposition of quotas).

As such, depending on the evolution of the coronavirus outbreak, this may become a pressing matter and may lead to the determination that the employment agreement has lapsed, so that the employer is allowed to replace the positions left vacant by the Zhuhai based employees. In this circumstance, no compensation shall be due to the employee for termination of the employment agreement.

Nevertheless, for now, it is important to wait for the announcements made by the Macau Government, as it is possible that specific measures are adopted to allow employers to temporarily fulfill the job vacancies created by the absence of Non-resident workers based in Zhuhai.

In any case, the above does not prevent the employer and the employee from reaching alternative arrangements during the border closure (e.g. negotiating a period of unpaid leave; arranging for the annual leave of the employee to be taken during the border closure period; or providing the employees with accommodation in Macau) or negotiating some kind of settlement/compensation for early termination of the employment agreement.

“As with Macau resident workers, in case of border closure, the absence from work by Non-resident workers shall be considered justified, for force majeure reasons, non-attributable to the worker (article 50. Par. 2 subpar. 2) of the Labour Relations Law).

As such, Non-resident workers that live in Zhuhai will be entitled to not show up for work until the border closure ceases. Although their absence is justified, employees will not be entitled to remuneration while the absence lasts.”

We will monitor the developments of the measures taken by the Government and we will let you know in case there are any updates.

Best regards,

Manuela António Team

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The distribution of this communication is limited and the information herein expressed is for general purposes only, not substituting legal advice on specific issues.

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