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Hong Kong Employment Law

Typical questions on leave arrangements during the Coronavirus Outbreak

It is becoming increasingly likely that the Hong Kong economy will suffer yet another significant blow in the following months as the city looks to stave off the Coronavirus outbreak. As businesses prepare for the worst, more and more are considering offering their staff to take annual leave or unpaid leave in order to better cope with the imminent financial setback.

Here are some of the typical questions that employers may have regarding such leave arrangements.

I. Can an employer direct its employees to take unpaid leave?

The Employment Ordinance (Cap. 57 of the Laws of Hong Kong) is silent on whether an employee can be compelled to take unpaid leave. In the absence of a legally binding agreement for the employee to take unpaid leave, compelling employees to take unpaid leave could lead to a breach of the employment contract. Special strategies shall be adopted to minimize legal risks.

II. Can an employer compel its employees to use up their annual leave?

In most situations, yes, but unless agreed by the employee, an employer must give the employee not less than 14 days' prior written notice before the time of the granted annual leave.

III. Risk of statutory lay-off

Employers should be wary that where the employee's remuneration is dependent upon the amount of work the employee is given, the employee shall be taken to be laid off if the total number of days of which work is not provided for him exceeds a certain period and the employment relationship may be regarded as terminated.

We understand very well that effective strategies and staff morale are both important to a successful and sustainable business. We find that many measures announced by different corporations in Hong Kong have compliance or legality issues. Employers need to be very careful when devising their strategies and how they are presented to the staff to avoid misunderstanding and to minimize legal risks.

We are providing legal support on practical strategies and flexible measures to large enterprises, SMEs as well as listed companies to minimize the financial pressure on the business as well as managing the impact on the employees during the novel coronavirus outbreak. We are happy to share with you our expertise, provide our assistance in regards to legal issues as well as assisting on designing and implementing the measures that are efficient, practical and legally sound.

For enquiries, please contact:

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