

## Client Alert

July 2021

### Issues Regarding Office Closure Due to COVID-19

**For more information:**

**Seraphim Ma**

Managing Partner

+886 2 2715 7252

seraphim.ma@bakermckenzie.com

**Pamela Tsai**

Partner

+886 2 2715 7396

pamela.tsai@bakermckenzie.com

As the pandemic alert has been raised to Level 3, companies have upgraded their pandemic countermeasures. Many companies have implemented work-from-home or a remote work plan in response to the pandemic to reduce the potential impact caused by COVID-19 and to ensure continuity of business operations.

One of the critical issues for work-from-home arrangement is how to keep an employee attendance record. According to the latest ruling issued by the Ministry of Labor (MOL), companies may follow the 'Guiding Principles for Employees Work Time Away from the Business Premises' (Principles, 勞工在事業場所外工作時間指導原則) to determine the working hours and maintain attendance records.

Previously the Principles applied to only four categories of workers: news media employees; teleworkers; outside salespersons; and drivers of public transportation vehicles. Now the MOL has confirmed its application to other types of employees, including work-from-home employees.

To recap the key points of the Principles:

#### 1. Agreeing on the start and the end times of regular working hours

The Principles provide that the employer and employee may agree on the employee's regular working hours in advance in writing, including the start and the end times. When it is difficult to calculate the time for which employees are away from the work premises, the employee's work time should be based on the normal starting and ending times in a day as agreed between the employer and employee.

#### 2. Agreeing on certain overtime hours without prior approval

The employer shall record the starting time of the overtime work, and the employee shall report back the finishing time so that the employer can record it accordingly. To save the trouble of obtaining consent for each occurrence of overtime, an employer may agree with an employee that a certain number of overtime hours (e.g. 20 hours a month) is exempt from obtaining advance reporting and/or approval from the employer, provided that the actual overtime hours are recorded.

This means employers have the choice of either providing pre-approved overtime hours with work-from-home employees and then confirming and entering these overtime hours into company records, or, the employer may request its work-from-home employees to obtain prior approval for overtime work.



### **3. Different methods of time recording**

The Principles have also recognized and expanded the methods of time recording. For example, GPS records, mobile phone check-in, internet reporting, bills signed by customers, communications software, and online login systems. Although there are now diverse range of methods to record an employee's working hours, an employer's obligation to keep attendance records still exists.

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15F, 168 Dunhua North Road  
Taipei 105405, Taiwan

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