

No.	Questions from Members	Answer from Lawyers
1.	Would like to know in regards to the pay cut and to be eligible for the wage subsidy, I understand that we need to maintain the pay of our employees, however, for employees who are taking above RM4K, can we discuss a pay cut?	Yes, employers are encouraged to discuss with employees. For pay cut, employers must seek consent from employees before proceeding otherwise the employee can treat it as a constructive dismissal event and sue the employer.
2.	KWSP, EPF can don't pay during this period? How many months?	Currently there are no exemptions for any statutory payments. Employers still have to continue paying. Coming 15 April 2020, EPF will be launching employee advisory services for employers to seek advice about restructuring or deferment of payments, details are forthcoming.
3.	How to handle staff retrenchment issues during MCO?	Employers need to Justify the retrenchment. Fail to justify the retrenchment, the employee can sue the employer for unlawful dismissal. If the retrenchment is justified then need to look into: > Employees below RM2,000 salary, they are governed by the Employment Act 1955 and the Employment (Termination & Lay Off benefits) Regulations 1980 which requires the employers to take certain steps. > Employers must give statutory notice of termination <ul style="list-style-type: none"> • Employed for less than 2 years - 4 weeks notice • Employed for 2 years & below 5 years - 6 weeks notice • Employed for 5 years and above - 8 weeks notice

		<p>> Retrenchment benefit:</p> <ul style="list-style-type: none"> ● Employee who worked above 1 year but less than 2 years - employers to pay 10 days of wages for each year of employment ● Employee who worked above 2 years but below 5 years - employers to pay 15 days of wages for each year of employment ● Employee who worked above 5 years - employers to pay 20 days of wages for each year of employment <p>> Reporting - report / inform the labour office 30 days prior to the retrenchment by filing up a prescribed form.</p> <p>Employers should also consider adopting some best practices before opting for retrenchment exercise (not compulsory but advisable to practice so that the retrenchment is done in a just and fair manner) among others:</p> <ul style="list-style-type: none"> ● Employers should always consider other cost cutting measures before resorting to retrenchment like a pay cut ● Who to retrench? - Last in first out, retrench foreign workers first before locals <p>By adopting these best practices, employers can pre-empt the retrenchment exercise being challenged in the future-</p> <p>For those earning RM2000, you have to refer to the employment contract.</p>
4.	If a Wage Subsidy Plan (WSP) is applied, can a company still sign an agreement with employees to give up their annual/medical leave?	<ul style="list-style-type: none"> ● Can. But the employee must consent to it ● However, WSP is silent on whether you can ask employee to give up annual /medical leave. It is advisable to get clear direction or confirmation from PERKESO to avoid any argument in future. ● Every step or procedure makes sure to show transparency.
5.	Employers shall not retrench their employees, ask their employees take unpaid leave and cut their employee salary for 6 months under Wage Subsidy	a) Based on their employment contract, if the allowance is based on company's

	<p>a) How about attendance allowance & travel allowance? Can we cut these 2 allowances from employee salary? Or employee consent is needed in this case?</p> <p>b) Under WSP, can employers ask their employees to take annual leave during these 6 months (including MCO period)?</p>	<p>discretion yes you may do so.</p> <p>b) The best practice is making it transparent and mutually consented between the employer and employee. However, WSP is silent on whether you can ask employee to take annual leave. It is advisable to get clear direction or confirmation from PERKESO</p>
6.	<p>Landlords are encouraged to give at least 30% discount on the rental to the tenant to enjoy tax rebate from the government. This 30% discount shall be calculated based on base rent only? Or including the monthly service & promotional charges?</p>	<ul style="list-style-type: none"> ● We need to look into the provisions of services charges and A&P charges in your tenancy agreement whether it is based on fixed rate. If the service charges and A&P charges are calculated at a fixed rate, then the 30 % discount should rightfully cover it. ● In any event, there is no clear guideline from LHDN yet. Further clarification from LHDN on this issue is required.
7.	<p>Does an employer need to fill up staff info (for pay cut/ retrenchment/ VSS) in PK Form if their salary is above RM4k?</p>	<ul style="list-style-type: none"> ● Yes. You need to fill up the PK Form irrespective of the salary. ● It is compulsory to fill up the form and send it back.
8.	<p>Does probation staff/ fix-term contract staff being pay cut/ retrenched need to be filled up in PK Form?</p>	<ul style="list-style-type: none"> ● Yes. You need to fill up the PK Form for probation staff / fix-term contract staff. ● It is compulsory to fill up the form and send it back.
9.	<p>What are the legal implications on employee retrenchment?</p>	<ul style="list-style-type: none"> ● Employers have to justify their retrenchment. For those RM2,000 and below, follow the employment act and labour regulation. For those above RM2,000 look into their contract of employment. ● Employee retrenchment needs to be complied accordingly, if not employee can sue the employer for unlawful dismissal whereby the employee can claim damages up to 12 months or 24 months.

10.	<p>Are there any conditions on the number of unpaid leave to be eligible for ERP? Does the employee need to be put under a full month of unpaid leave? Or can it be a certain number of days only?</p>	<ul style="list-style-type: none"> ● For ERP, the minimum unpaid leave is 30 days and maximum is 6 months.
11.	<p>If we have a few branches from different companies, and we want to close down one of the branches in one of the companies. We would like to transfer the staffs to the other company, but the company have the existing staffs. Can we replace them?</p>	<ul style="list-style-type: none"> ● The employer is closing down the other branch, rightfully the retrenchment should start on that branch. The employer will be running on a very high risk and not advisable to do so. In order to do retrenchment, employer have to show that they are indeed fair and equitable to everyone. ● Suggest to do retrenchment at the branch that is closing down first, thereafter cut the sales admin at the existing branches, subsequently thereafter might re-engage the staff in the branch that have been closed down. ● Some employment contracts do provide the clause that group inter companies transfer is allowed. If this is not stated in the employment contract, the employer cannot transfer the staff.
12.	<p>If both parties, tenant and landlord have obtained a mutual agreement to waive or deduct the rental, is it necessary to get the lawyer to draft the extended tenancy agreement and get it stamped by IRB?</p>	<ul style="list-style-type: none"> ● Yes, it is always a good practice to have it documented. ● Reduction of rental means variation to the terms of a tenancy agreement. It will be good to have it documented in a supplemental agreement to confirm the intention of both parties of the rental reduction and to have it stamped.
13.	<p>As for the wage subsidy, it's stated that companies with 75 employees and below will not need to show proof of company sales decline by 50%; does the number of employees include part timers?</p>	<ul style="list-style-type: none"> ● It's based on the list that company submitted to PERKESO. If the part-timers are not in the list or no EPF and SOSCO contribution, you may not be eligible for this program
14.	<p>I have 2 staffs more than 65 years old and I have been doing EPF contribution for them. Their salary is below RM4000. But they didn't contribute to SOSCO for 4-5 years. Am I qualified for the stimulus package provided by the government?</p>	<ul style="list-style-type: none"> ● Employer might encounter difficulty to apply the stimulus package as the government is referring to the PERKESO record, not EPF.
15.	<p>For employees who are yet to be confirmed, how to handle the retrenchment?</p>	<p>Same law is applicable to the probation and confirmed staff. If the employees are earning under RM2000 then it is governed by the Employment Act 1955 and the Employment (Termination & Lay Off benefits) Regulations 1980. For those earning</p>

		above RM2000 you have to refer to the employment contract.
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