

Haze Emergency — Are employers obliged to declare an off-day?

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By Employment Law & Administrative Law Practice Group

The haze situation that has engulfed the nation has been deteriorating lately. As at 17 September 2019, the Air Pollution Index (API) in Sri Aman, Sarawak achieved a reading of 369¹. In the event the API reading exceeds 500 in a particular area, a state of emergency may be declared by the government² (“haze emergency”).

In view of this, a question that arises from the employment law standpoint is whether employers are obliged to declare an off-day for its employees pursuant to a declaration of an emergency.

The Federal Constitution provides that the Yang di-Pertuan Agong may issue a Proclamation of Emergency where the security, or the economic life, or public order in Malaysia (or any part thereof) may be in threat³. A Haze emergency on the other hand, would likely be in a form of an executive / administrative order issued by the Prime Minister.

The Employment Act 1955 and Holidays Act 1951 do not prescribe any statutory obligation on employers to declare rest days in the event of a haze emergency.

However, in 2005, the then Prime Minister, Datuk Seri Abdullah Ahmad Badawi, declared a state of emergency in Kuala Selangor and Port Klang when the API breached the 500 mark⁴. Amongst the orders pursuant to the emergency declaration was a closure of private offices, save for essential service industries⁵. In the event that an executive order of such nature is issued by the government, it is highly advisable that employers comply with the order.

Apart from that, employers must also bear in mind that they are under a legal obligation to provide a safe work environment for its employees under the Occupational Safety And Health Act 1994 (“OSHA”). The Department Of Occupational Safety And Health (“DOSH”) had issued a guideline for the protection of employees against haze⁶. In the event an emergency is declared, it would be unsafe for employees to continue working on-site. Employers should also consider whether they have any policy on the granting of “Disaster Leaves” as part of the employees’ terms and conditions of employment.

In short, the on-going haze is expected to cause workforce issues in the company, with employees being absent from work. Barring any declaration of a haze emergency, employees are still expected to attend work, unless they are permitted under company policy to take disaster leave or certified to be medically unfit for duties due to the effects of haze. Employers may also fall back on policies that permit employees to work from home as a measure to prevent a decline in work productivity.

Raymond TC Low and Benedict Ngoh from our Employment and Administrative Law Practice Group contributed this article.

¹<https://www.thestar.com.my/news/nation/2019/09/17/haze-in-sri-aman-s039wak-breaches-hazardous-level-api-at-369>

²<https://www.malaymail.com/news/malaysia/2019/09/19/putrajaya-says-will-declare-emergency-if-api-breaches-500-due-to-haze/1792066>

³ Article 150 (1) of the Federal Constitution

⁴<https://www.thestar.com.my/news/nation/2005/08/11/haze-emergency-declared-in-kuala-selangor-port-klang>

⁵<https://www.thestar.com.my/news/nation/2005/08/11/haze-emergency-declared-in-kuala-selangor-port-klang>

⁶<https://www.doe.gov.my/portalv1/wp-content/uploads/2013/06/Guidelines-for-the-Protection-of-Employees-Against-the-Effects-of-Haze-at-Workplaces.pdf>

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