

Ius Laboris Webinar

Coronavirus: Restructuring across the APAC region following COVID-19

Friday 10 July 2020

8:00 – 8:45 CEST

11:30 – 12:15 IST

14:00 – 14:45 HKT

15:00 – 15:45 JST

16:00 – 16:45 AEST



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WHERE ARE WE NOW?



HONG KONG – WHERE ARE WE NOW?

GENERAL OVERVIEW

- 23 January to 6 July: 1,268 cases and 7 deaths in total – new locally transmitted case are very rare
- Government restrictions have now been relaxed but people remain cautious

EMPLOYMENT OVERVIEW

- Office working has resumed
- Depressed economy and increased unemployment due to COVID-19 and political protests
- New national security law creates uncertainties going forward

ANTI-EPIDEMIC FUND

- Government Employment Support Scheme (ESS) – provides temporary subsidies to employers
- Employers undertake not to make redundancies during subsidy period and to spend wage subsidies on paying wages to employees; penalties for failure to comply

INDIA – WHERE ARE WE NOW?

RETURN TO WORK

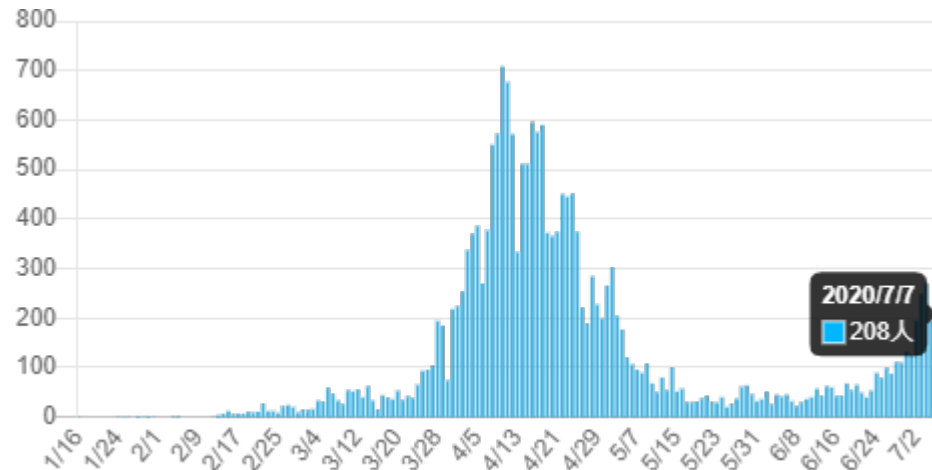
- Despite increasing number of cases, Government announces Unlock 2.0
- Most businesses allowed to operate except in identified Containment Zones
- International flights not yet operational, Metro services not yet operational, limited public transport
- Night curfew from 10:00 to 05:00 impacts ability to operate night shifts
- Practically, many employees continue to work from home
- Educational institutions have commenced online classes

JAPAN – WHERE ARE WE NOW?

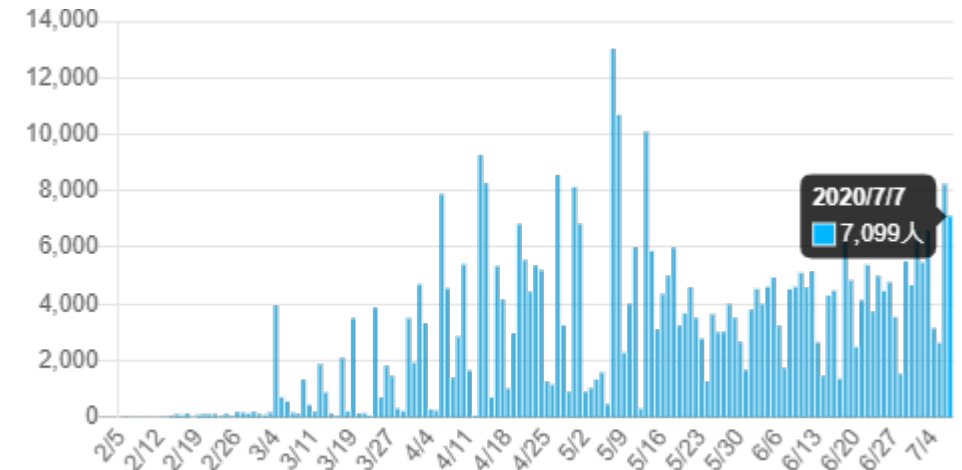
BACKGROUND

- 7 April A state of emergency was declared (Tokyo and 6 other prefectures)
- 16 April Target areas were expanded to nationwide
- 25 May Declaration of state of emergency lifted
- 18 June All requests for self-restraint by the Governor of Tokyo lifted

NUMBER OF POSITIVE PCR TESTS / PEOPLE WHO TOOK PCR TESTS



Positive Total 20,132 , as of 7 July 2020



Source: Website of Ministry of Health, Labour and Welfare

AUSTRALIA – WHERE ARE WE NOW?

CURRENT COVID-19 STATISTICS (AS AT 5 JULY 2020)

- Total number of cases – 8,362
- Total number of recovered cases – 7,355
- Total number of deaths – 104
- Total number of tests conducted – More than 2.6 million (0.3% positive)
- Currently – significant spike in cases in Victoria

CURRENT TRAVEL RESTRICTIONS BY STATE

- Victoria – metropolitan Melbourne has regressed to Stage 3 from midnight 8 July for at least six weeks
- Queensland – borders closed to all unless exemption (resident, work close to the border etc). Set to change on 10 July – but restrictions will remain for Victorians or those having visited Victoria in previous 2 weeks
- New South Wales – borders open except to those in Victoria (as of midnight 7 July)
- Western Australia – borders remain closed. No indication of date to reopen
- Northern Territory, South Australia, Tasmania, Australian Capital Territory – no border closures, but variation of quarantine requirements upon arrival

AUSTRALIA – PUBLIC HEALTH DIRECTIONS

CURRENT PUBLIC HEALTH DIRECTIONS

- Social distancing (1.5 metres) applies in all States/Territories. Various restrictions on numbers permitted for social gatherings / restaurants and cafes / entertainment and sporting events etc
- Save for Victoria, businesses have slowly commenced returning to work but required to apply one person per 4 sq. metre rule
- State of Emergency remains – end dates vary from State to State
- From midnight on 8 July, in Victoria, stage 3 restrictions will apply for six weeks – only permitted to leave residence for four reasons: food, care, exercise, and study and work (if cannot be done from home). Restricted to principal place of residence
- Overseas travel currently banned with a few exceptions. Returning to Australia – 14 days' quarantine required at designated facilities in port of arrival

OTHER MEASURES

- **JobKeeper scheme** – effective 30 March - 27 September. \$1,500 per fortnight to eligible employees. Eligibility criteria - reduction in aggregated turnover depending on size compared to previous year. Companion amendments to Fair Work Act (national employment legislation) to allow for reductions in working hours, directing annual leave, and alteration of duties and location of work
- **Modern Award variations** – temporary schedule included in 99 awards for provide 2 weeks' unpaid pandemic leave; take annual leave at half pay. Originally until 30 June, but applications for extensions currently occurring

RESTRUCTURING



HONG KONG – RESTRUCTURING

ALTERNATIVE TO REDUNDANCY

- Withholding remuneration (most common with senior-level employees)
- Salary reductions with corresponding reduction of hours
- Reduction in benefits and/or allowances
- Hiring freezes
- Unpaid leave
- Forced annual leave

RISKS WITH IMPLEMENTING ALTERNATIVES TO REDUNDANCY

- Potential legal ramifications for varying employment terms
 - Unreasonable variation of terms claims
 - Constructive dismissal claims
 - Civil and criminal liabilities

INDIA – RESTRUCTURING

SALARY REDUCTIONS

- Many companies have reduced salaries of employees (most have obtained consent from employees)
- In some instances, employees have been asked to proceed on unpaid leave

TEMPORARY LAY-OFF

- Statutorily allowed for factories, mines and plantations. However, companies in certain other sectors also following similar provisions
- Lay-off allowed for 45 days in a 12-month period at 50% salary
- In the case of factories employing 100 or more ‘workmen’ (blue collar employees), requirement of prior Government approval for lay-offs (this is not required in specified situations, including a natural calamity)

JAPAN – RESTRUCTURING

THINGS TO BE DONE BEFORE WORKFORCE REDUCTION

- **Reduce Non-personnel-related costs**
- **Access leave of absence (kyūgyō) subsidies if you can**
 - At least 60% of the average wage must be paid
 - If certain requirements are met, the employer can receive employment adjustment subsidies (koyō chōsei joseikin) from the government
- **Reduce Bonuses**
 - A part of a discretionary bonus that varies depending on company performance can be reduced
 - If a fixed amount is guaranteed, the consent of each employee is required for reduction
- **Reduce base salary**
 - Consent of each employee is required

AUSTRALIA – RESTRUCTURING

ALTERNATIVES TO REDUNDANCY

Stand-down of employees

- Derived from Fair Work Act, enterprise agreements or contract of employment
- Fair Work Act (only available if not in enterprise agreement or contract) – stand down is permitted if:
 - during a period in which the employee cannot usefully be employed
 - because of a stoppage of work for any cause
 - for which the employer cannot reasonably be held responsible

Access to leave entitlements

- “Leave burn” programs - directions to take annual leave and long service leave
- Personal/carers' leave – not available during period of stand down

Renegotiation of salaries and working hours

- Variations to contract of employment to reduce salary - risk of repudiation of contract if unilateral change
- Withholding bonuses/incentives

AUSTRALIA – RESTRUCTURING

AGREED LEAVE WITHOUT PAY

- Importance of agreement in writing
- Consideration of any consultation requirements
- Consideration of position upon return and/or in the event of redundancy of role during leave without pay period

VARIATION OR TERMINATION OF ENTERPRISE AGREEMENT

- Remove onerous provisions / reduce wages or defer increases, or reduce other costs to business
- A temporary COVID-19 regulation allowing employers to give employees one day's notice before putting a proposed variation to employee ballot has been withdrawn (reverting to 7 day notice period)
- Variation must be approved by the Fair Work Commission (industrial tribunal) - approval requirements must be satisfied

HONG KONG – RESTRUCTURING

DEFINITION OF REDUNDANCY

- “*where the position no longer exists*” (common law)
- s.31B Employment Ordinance – Right to Severance Payment

IMPLEMENTING REDUNDANCY

- No statutory process, but potential risk of discrimination claims if unfair selection criteria applied

PROTECTED EMPLOYEES

- Employees on statutory sick leave, pregnant or on maternity leave, have suffered a work injury (until resolved/approved by Labour Department) or have given evidence re enforcement of EO or re accident at work or are on jury duty, cannot be made redundant
- Criminal offence to do so

TERMINATION PAYMENTS

- Employer must pay wages, accrued but unused annual leave, payment in lieu of notice, statutory severance (if employee has 2 or more years’ service), outstanding expenses and other contractual payments

INDIA – RESTRUCTURING

REDUNDANCY

- No restriction on effecting reduction in workforce following the impact of Covid-19
- Redundancies in factories employing 100 or more ‘workmen’ (blue-collar employees) require prior approval of Government
- No consultation requirement except where there is a recognized trade union representing the employees
- Termination of services of a ‘workman’ is subject to the following conditions:
 - One month's notice or payment in lieu (in the case of factories employing 100 or more ‘workmen’, the notice requirement is 3 months)
 - Retrenchment compensation (statutory severance payment) @ 15 days' salary for every completed year of service or part thereof in excess of 6 months
 - 'Intimation' to be filed with the jurisdictional labour authorities (where prior Government approval is not applicable)
- ‘Last-in-first-out-principle’ (a workman with longer service has priority to remain employed) must be followed for redundancy, unless there is reasonable justification for deviating from this
- Redundancy of ‘non-workman’ (white-collar employee) based on terms of employment contract

JAPAN – RESTRUCTURING

DISMISSAL FOR REDUNDANCY (seiri kaiko)

- **Requirements**
 - There is a high and reasonable necessity to reduce the workforce
 - The company has made every effort to cut costs before dismissing for redundancy
 - The criteria for selecting the employees to be reduced are fair and reasonable
 - The company has explained and discussed in good faith with the relevant employees and/or the relevant labour union
- **Notice period:** At least 30 days beforehand
- **Statutory severance payment:** No statutory severance payment is required
- **Filing:** If 30 or more employees are expected to leave the company, a filing to 'Hello Work' is required

JAPAN – RESTRUCTURING

MUTUAL SEPARATION

It is common practice to offer a severance package and terminate the contract of employment by mutual agreement

Order of workforce reduction:

1. Suspension of new hiring and cancellation of offer of employment
2. Termination of non-regular employees
3. Termination of regular employees

AUSTRALIA – RESTRUCTURING

REDUNDANCY

Statutory redundancy – An employee is entitled to redundancy pay by the employer if the employment is terminated:

- at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
- because of the insolvency or bankruptcy of the employer

'Genuine redundancy' - unable to access unfair dismissal regime:

- the person's job doesn't need to be done by anyone
- the employer followed consultation requirements in the award, enterprise agreement or other agreement
- reasonable, in the circumstances, to have given the employee another job within the employer's business of an associated entity (i.e. redeployment must be considered)

Redundancy payments

- Under Fair Work Act, redundancy pay is based on continuous service with employer (up to 16 weeks' for at least 9 years' service at 'base rate of pay'). Modern Award, enterprise agreement or contract of employment may include additional redundancy pay
- Can apply to Fair Work Commission to have amount reduced if other acceptable employment located by employer, or employer can't afford the full entitlement

KEY ISSUES GOING FORWARD

FLEXIBILITY IN THE WORKPLACE

HEALTH & SAFETY

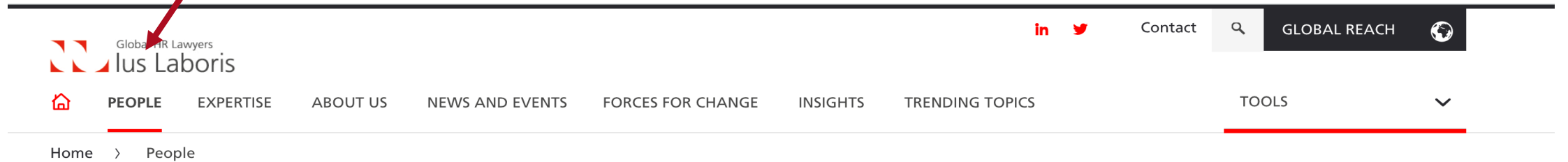
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CLAIMS



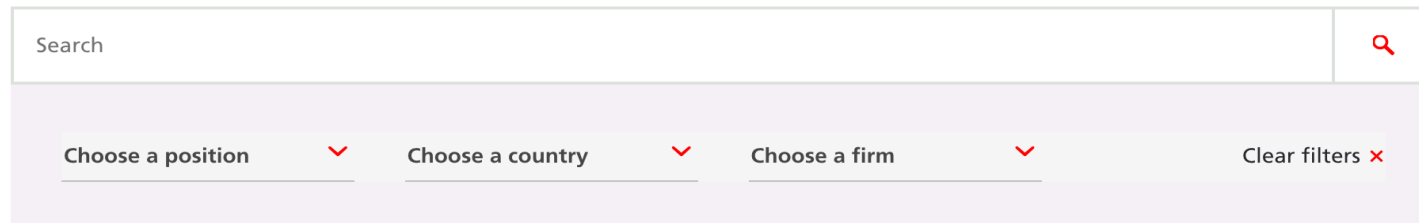
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<https://www.iuslaboris.com/en-gb/lawyers/>



The screenshot shows the top section of the Ius Laboris website. On the left is the logo, which consists of a red square icon with white geometric shapes and the text "Global HR Lawyers" above "Ius Laboris". To the right of the logo is a navigation bar with links: "PEOPLE" (underlined in red), "EXPERTISE", "ABOUT US", "NEWS AND EVENTS", "FORCES FOR CHANGE", "INSIGHTS", and "TRENDING TOPICS". Further right are links for "Contact", a search icon, and a "GLOBAL REACH" button with a globe icon. Below the navigation bar is a breadcrumb trail: "Home > People".

100% focus: labour, employment and pensions law



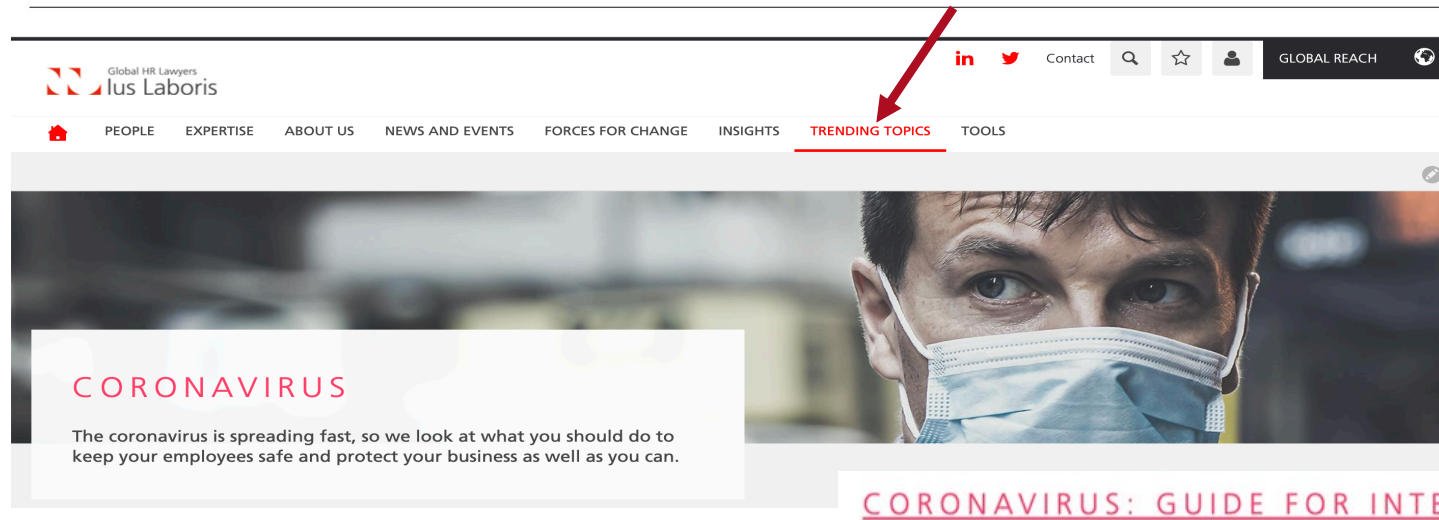
This section contains a search bar with the placeholder text "Search" and a red magnifying glass icon. Below the search bar is a filter bar with three dropdown menus: "Choose a position", "Choose a country", and "Choose a firm", each with a red downward arrow. To the right of these menus is a "Clear filters" link with a red 'x' icon.

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