



The Prime Minister of Malaysia had on 16 March 2020 announced the imposition of a Movement Control Order (“**Order**”) in an attempt to control the outbreak of Covid-19. The Order, effective across the nation, will commence from 18 March 2020 until 31 March 2020 (“**Movement Control Period**”). For further information on the Order and Frequently Asked Questions by Employers on the Order and the Movement Control Period, please refer to <https://www.shinassociates.com.my/movement-control-order-2020-employer-faqs/>.

In light of the difficulties faced by the public as a result of the Order, the Malaysian Government has announced a number of incentives under the revised Economic Stimulus Package 2020.

1. RM600 Financial Incentive For Employees Forced To Take Unpaid Leave

On 16 March 2020, the Malaysian Government, in conjunction with the Employment Retention Program under the revised Economic Stimulus Package 2020, announced a monthly financial incentive of RM600 (“**Financial Incentive**”) for employees who have been forced to take unpaid leave from a minimum of 1 month to a maximum duration of 6 months following the imposition of the Order .

The details of the Financial Incentive are set out in the press statement on the Employee Retention Program dated 17 March 2020; the circular on the RM600 Financial Incentive for Employees in the Employment Retention Program under the Economic Stimulus Package 2020 dated 18 March 2020; and the Frequently Asked Questions on the

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Employment Retention Program dated 18 March 2020 (“FAQs”), all of which were issued by the Employees’ Social Security Organisation (“SOCSO”). The Financial Incentive will commence from 1 March 2020 until further notice by SOCSO.



The eligibility conditions for the Financial Incentive are as follows:

- (i) All private sector employees including part-time employees who have registered and are currently contributing to the Employment Insurance System (“EIS”) with a monthly salary of RM4,000 and below, where such employees have been issued notices to take unpaid leave by their employers, are eligible (“**Eligible Employees**”);
- (ii) Retired workers, public sector workers, self-employed workers including freelancers, foreign workers, and tradesmen are not eligible.

The payment of the Financial Incentive is dependent on the period of the unpaid leave imposed by the employer. Once the period of unpaid leave has met the minimum duration of 1 month, the payment of the Financial Incentive will be made for each Eligible Employee, provided registration requirements are complied with by the employers. Employees which are required to take unpaid leave for durations less than 1 month will not be eligible to obtain the Financial Incentive.

Further, employers who have received the Financial Incentive payments from SOCSO on a monthly basis on behalf of Eligible Employees, are responsible to credit the monthly payments of RM600 into the respective bank accounts of the employees within 7 days from the date of receipt of the payment from SOCSO. Employers who submit any false, inaccurate or misleading information to SOCSO or fail to credit the monthly payments to the eligible employees may face legal action, and such failure may lead to the applications being subsequently suspended.

Applications for the Financial Incentive will have to be submitted by employers via email, to erpc19@perkeso.gov.my from 20 March 2020 onwards. Employers will bear the responsibility to pay the Financial Incentive to their Eligible Employees, on a monthly basis, once they have received the respective payments from SOCSO. Employers will have to submit the application form “ERPC-19” and to attach the required supporting documents, namely, a copy of the employer’s statement of account with the registration number and bank details and the notice of unpaid leave with a list of their Eligible Employees.

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2. Withdrawal from the Employees Provident Fund ("EPF").

All Malaysians below the age of 55 working in the private sector are allowed to withdraw up to a maximum of RM500 per month, from their EPF Account 2 for a period of 12 months. Applications to withdraw the payments from the EPF can be made from 1 April 2020 onwards.

3. Allocation of a total of RM600 million to the Ministry of Health.

RM500 million has been allocated for the purchase of medical equipment such as ventilators and intensive care unit equipment, additional personal protective equipment for medical personnel, and laboratory requirements for Covid-19 screening. RM100 million has been allocated to finance the appointment of 2,000 personnel on a contractual basis, particularly nurses.

4. Allocation of RM130 million to individual States to combat the Covid-19 outbreak.

RM130 million will be equally distributed to each State to assist small hawkers and businesses affected by Covid-19, Covid-19 patients and their family members, as well as State Government staff tasked to overcome the crisis.

5. Extension of repayment of the National Higher Education Fund ("PTPTN").

Individuals which have outstanding PTPTN loans are granted an extension of 6 months for the repayment of the loans, effective from 23 March 2020 until 30 September 2020.

FREQUENTLY ASKED QUESTIONS

1. Is every employee entitled to the Financial Incentive?

No, pursuant to the FAQs, employees who are excluded from eligibility for the Financial Incentive are: (i) employees who are not registered and currently contributing to the EIS; (ii) employees who earn more than RM4,000 per month; (iii) retired workers; (iv) public sector workers; (v) self-employed workers including freelancers; (vi) foreign workers; and (vii) tradesmen.

2. Are payments of the Financial Incentive made on a daily basis?

No, the rate of payment of the Financial Incentive has been fixed at the rate of RM600 per month.

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3. If the period of the unpaid leave is more than 1 month but less than 2 months, will my employee be entitled to a prorated amount of the Financial Incentive for the remaining period of the 2nd month?

No, as the period of eligibility for the Financial Incentive is 1 month, the employee will be entitled to only RM600 for the 1st month of unpaid leave and will not be entitled to a prorated amount for the remaining period of unpaid leave.

4. Why are the payments paid through the employer rather than to the employees directly?

This is to ensure that all Eligible Employees will receive the Financial Incentive they are entitled to and does not result in any Eligible Employee being excluded. SOCSO has recognised that this method of payment of the Financial Incentive is the most effective and the processing time for the verification and payment can be shortened.

5. Following the announcement of the Financial Incentive, can I now force my employees to take unpaid leave?

Notwithstanding that the Government has announced the Financial Incentive for eligible employees forced by their employers to take unpaid leave, it remains to be seen whether this recognition by the Government that many employees will be suffering such consequences from the imposition of the Order would negate the position of employment laws in relation to forced unpaid leave. Unless otherwise provided by the law, employers still do not have the authority to force their employees to do so unless the employees have voluntarily consented and mutually agreed in writing to take unpaid leave.

6. If an employee has not been instructed to return to work after the end of the period of unpaid leave, will the employee be entitled to the benefits of the EIS?

Yes, the FAQs provide that where an employee has not been instructed to return to work after the period of unpaid leave, the employee must assume that he has lost his/her job and is entitled to claim for the EIS benefits, provided the employee is eligible for the EIS entitlements. An employer should therefore take note that if the employee is granted the EIS entitlements, this may potentially be used as evidence against the employer as this would mean that the Government has acknowledged that the employee has lost their job and may be used in potential constructive dismissal claims brought against the employer by the affected employee.

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7. **Are employers required to pay their employees their salary and benefits during the Movement Control Period?**

Yes, notwithstanding the Movement Control Period, employees are entitled to their salary and benefits, according to their respective employment contracts. Non-payment of salaries and/or benefits by an employer is generally considered to be a breach of the employment contract under employment law. However, it is arguable that benefits such as travel allowances may be withheld by employers for employees which do not work in the “essential services” sectors due to the restriction on travel during the Movement Control Period.

CONCLUSION

While the Malaysian Government has introduced the Financial Incentive to aid employees who have been forced by their employers to use their unpaid leave during the Movement Control Period, this does not mean that employers are permitted to force their employees to take unpaid leave and to cease salary payments to their employees for the duration of the Movement Control Period. It should also be noted that the Prime Minister aims to announce a more comprehensive Economic Stimulus Package with further initiatives on 30 March 2020 to aid Malaysians affected by the Order.

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