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## The Great Return (to the office)

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# LEGAL UPDATE

# In this Update

Employers joining the fight against the scourge of COVID-19 in the past years have had to incessantly adapt their workplaces to keep their employees healthy and themselves safe from strict government guidelines. The virus, which was first vilified for driving employees out of their offices and blurring the lines between the workplace and home, has now become the unwitting catalyst for the revolution of remote work as employees came to a moment of great epiphany - they liked working from home.

This article discusses whether employees can be compelled by their employers to return to the office.

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## **INTRODUCTION**

COVID-19 has necessitated businesses and companies to adapt to what are often constantly changing government guidelines. Over the past two years, the once 'entitled and bizarre' concept of working from home is now increasingly ubiquitous – even being hailed by business publications as being 'here to stay' and as the 'future'.

Whether one agrees with such declarations on the future trajectory of 'remote-working' will depend on an inexhaustive list of subjective factors, ranging from individual preferences to specific business demands in one's industry. Preferences may also depend of course on whether one is an employee or an employer.

## **THE NEW NORMAL**

As of a recent human resource survey conducted in March 2022, it revealed that a staggering 41 per cent of workers in Singapore would rather work remotely than receive a bigger bonus – a strong declaration for their preference for remote working.

These shifts in preferences cannot be overlooked by employers if they want to retain a competent workforce. A nine-month study by the Institute of Policy Studies tracking 2,000 respondents showed that Singapore workers would strongly prefer employers to adjust new work arrangements to suit their preferences – with 42% of workers who prefer work-from-home or flexible working arrangements prepared to consider resignation if made to go to the office on most days.

## **THE LONG (BUT LIMITED) ARM OF HUMAN RESOURCES**

The question remains - can employees insist on working from home, or can they be compelled (with attendant consequences for disobedience) to return to the office?

It is an established principle that an employee owes a duty of obedience to an employer. The commercial bedrock of any contract of employment is that the employee will obey orders in exchange for remuneration, harking back to the less polite days when employers were known as "masters" and employees were known as "servants". Willful refusal to comply with an instruction could be grounds for summary dismissal. However, this is naturally subject to the caveat that these instructions must be lawful and reasonable. For instance, it is not reasonable for an employer to force a pilot to fly an unsafe aircraft, or to ask the pilot to fly in defiance of local

laws prescribing minimum weather conditions, for eminently sensible and obvious reasons.

A directive being lawful and reasonable will mean that employers must comply with any and all statutory guidelines dictating how employers should treat employees. One of the more important guidelines would be those encapsulated in the Workplace Health and Safety Act 2006 that places a duty on the employer to safeguard and look after the health, safety, and welfare of their employees.

Therefore, it would be unsurprising if ensuring that the workplace is not overcrowded, ventilated, sanitary and free from infectious agents like COVID-19 are among the list of duties placed on employers. It would very likely be an unlawful instruction for employers to demand employees to return to workplaces that do not fulfill the requirements placed on the employer by the law. For example, if the workplace was unsanitary, with employees having a high chance of contracting disease, it would likely be unlawful and reasonable to direct employees to return to such an office, and the employee would be justified in refusing to comply with these instructions.

In considering their return-to-work policies, employers would be wise to consider whether they can fully comply with all their obligations and whether they are able to ensure the health and safety of their employees as they travel to and from the workplace before issuing directives to their employees to return to the office. This may include considering if employees are fully vaccinated, or whether there is sufficient space for employees to work in safe conditions.

The argument often advanced by employees for remote working is that it is “better” for them and therefore more productive for their employer. Even if that were the case, the real question is: whose call is that to make? The obvious retort is that it is the employer’s call since it is their business and they pay the salaries – at least until the employer starts to feel the effects of the great resignation arising from his or her call. The commercial considerations may not be so straightforward.

## **THE CONSEQUENCES OF DISOBEDIENCE**

Assuming an employer’s directives to an employee to return to work are lawful and reasonable, what happens if the employee decides that insisting on remote work would be the metaphorical hill for him or her to die on?

As mentioned above under Singapore law, such willful disobedience will likely be considered to be insubordination, which would typically be deemed as misconduct under most employment contracts. Where an employee has engaged in conduct amounting to misconduct, the law may deem it to be a repudiatory breach of the employee’s employment contract

– entitling the employer to summarily terminate the employment relationship.

An employee’s refusal to follow lawful and reasonable directives of employer without justifiable excuses can be considered willful disobedience under the law – which will also amount to misconduct. Under the law, such misconduct destroys the fundamental relationship of trust and confidence that underlies the employer-employee contract, therefore rendering the employment relationship untenable.

However, consider the current supply chain and labour crunch. It will be curious to see if employers are willing to take things as far as summary dismissal for an issue that perhaps (as shown by remote working during the pandemic) is not as serious or unacceptable as once thought, when business requirements and prudence might push employers and employees to instead start difficult conversations.

## **CONCLUSION**

Remote working is a concept that has gained increasingly popular among employees throughout these pandemic years. Although favored for multifarious reasons on the side of the employees, employers too may also have good reasons for wanting the employee’s return to the fold in the office.

Ultimately, an employee is compelled by the law to follow the lawful and reasonable directives of their employers. However, employers must in turn ensure that their directives are both lawful and reasonable under the law by complying with any and all statutory duties placed upon them. Where both employer and employee can adhere to their respective duties – safe and lawful transit of employees back to the office can be ensured.

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