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WORKING FROM HOME IS NOT A LICENSE TO DISAPPEAR

by Amardeep Singh Toor & Wong Lien Taa

MOHD KHAIRIL BIN ABDULLAH V TELEKOM MALAYSIA BERHAD

The Employment Act 1955 now allows employees to apply for flexible working arrangements. The Ministry of Human Resources has since issued guidelines on the same. For our article on flexible working arrangements, please click here. A recurring concern with these arrangements is attendance, in particular, how it is monitored, recorded, and enforced when the employee is not physically in the office.

This is illustrated in the dispute below concerning the dismissal of an Assistant Manager.

The employee was placed on a Performance Improvement Plan ("**PIP**") while working from home during the Covid-19

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pandemic. As part of the PIP, his superior instructed him to record his daily log-in and log-out times via WhatsApp. He repeatedly failed to do so.

When employees were later directed to return to the office, the employee's attendance problems persisted which included being absent without informing his superior and claiming to be working from home. He had also failed to inform his superior about his whereabouts or account for the same. He was thereafter dismissed.

In finding the dismissal to be with just cause or excuse. The Industrial Court considered that:

(a) the Company's flexible working arrangement expressly required employees to remain available, contactable, reachable, and responsive during working hours. The employee failed to meet that standard;

(b) the employee's conduct showed a disinterest in remaining in employment; and

(c) the employee admitted that his superior's instruction to record his daily log-in and log-out times via WhatsApp remained in force throughout the material period.

In short, working from home is not a licence to disappear. The case underscores the importance of clear flexible working policies which address among others how attendance is recorded and managed in ensuring that employees remain contactable and responsive during working hours.

The Company was represented by Partner, **Amardeep Singh Toor** and Senior Associate, **Wong Lien Taa**. Scan the QR code below to see the Award.

If you have any queries, please contact Partner, **Amardeep Singh Toor** (ast@lh-ag.com) or Senior Associate, **Wong Lien Taa** (wlt@lh-ag.com)

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