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September 2020

## Employment Update: Work Arrangements during Typhoons and Rainstorms

One of the changes brought about by Covid-19 is a shift in work practices particularly in relation to working from home. This has brought to the fore the question of whether employees have to work in the case of adverse weather conditions such as Black Rainstorm warnings, Typhoon signal 8 (or above) and/or “extreme conditions” caused by super typhoons (“Adverse Weather”). In this article, we consider arrangements that employers may consider putting in place during Adverse Weather conditions.

### Introduction

In Hong Kong, there is no law relating to work arrangements in case of Adverse Weather.

Although the Labour Department's Code of Practice during Typhoons and Rainstorms (“**Code**”) provides practical guidelines for employers and employees, the Code is not legally binding and does not mention work from home (“**WFH**”) arrangements in the case of Adverse Weather.

Consequently, whether an employee gets to take a day off or is expected to work during Adverse Weather conditions would largely depend on the contractual agreements in place, and whether there are agreed terms in respect of WFH. If the employee is contractually entitled to a day-off in case of Adverse Weather, the employee cannot be forced to come into the office or WFH.

If there are no contractual agreements in place, an employer may wish to consider coming to an agreement with its employees as to whether to require employees to work during Adverse Weather conditions. This may include coming into work as operational needs and the urgency of service dictates, or giving employees time off because their work cannot be carried out at home (for example, in case of service industries, it is unlikely that employees such as waiters and hairdressers will be able to WFH).

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## Laws relating to employees' safety

Employers are reminded that: -

1) The Occupational Safety and Health Ordinance (“**OSHO**”) requires an employer to maintain a safe workplace for employees. This includes providing and maintaining safe access to and egress from the workplace in a condition that is safe and without risks to health.

2) Under the Employees' Compensation Ordinance (“**ECO**”), employers are liable in case of an accident that causes injury or death of the employee who is commuting to or from the workplace when the Adverse Weather warning is in force. This includes accidents occurring during commute by a direct route from the employee's residence to their workplace within four hours before working hours, or from their workplace back to their residence after work, within four hours after working hours.

3) Under the Employment Ordinance, it is unlawful for an employer to reduce the employees' entitlements to annual leave, statutory holidays, or rest days to compensate for the loss of working hours resulting from Adverse Weather.

## Arrangements relating to Adverse Weather

Subject to existing contractual rights and obligations, employers may consider the following factors when putting in place any arrangements and policies which apply during Adverse Weather conditions.

1) **Awareness of policies:** Employees should be made aware of any Adverse Weather policies in place. It may also be useful to circulate reminders of the Adverse Weather policies in force to ensure employees are familiar with the protocol to be followed in the event there is a forecast of Adverse Weather.

2) **Working from home:** Given the increased use of technology, it may be useful for employers to set out policies for WFH arrangements during Adverse Weather conditions. Factors that an employer should consider before incorporating WFH has been discussed in details in our previous article and can be accessed on our website. In addition, we note that during Adverse Weather conditions, employers should consider cancelling out-of-office meetings and where practicable, make use of technology for conducting meetings.

3) **Realistic assessment and flexibility:** Employers may consider factors such as nature of work, whether the work can be done remotely, the urgency of the work in question and the difficulties faced by the employee(s) when requiring employees to work during Adverse Weather conditions. Whilst WFH may be a feasible option for some employees, employers must bear in mind circumstances where it may not be possible for employees to either report to work or WFH (for example, in cases of property damage or disturbed internet connection during Adverse Weather).

4) **Communication:** Alongside clear communication of arrangements and policies, employers must set up points of contact such as a supervisor or human resource personnel who may be contacted in case of any queries, reporting issues and any difficulty the employees face while reporting to the office.

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To conclude, it may be helpful for employers to review their existing policies and seek legal advice if they wish to amend employment contracts or employee handbooks to incorporate work arrangements during Adverse Weather. In cases where employers do not have policies in place, it may be worthwhile to introduce policies in relation to Adverse Weather.

For further information in relation to employment law related matters, please do not hesitate to contact Andrea Randall ([andrearandall@gallhk.com](mailto:andrearandall@gallhk.com) / +852 3405 7688).

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