
COVID-19 OUTBREAK IN CHINA: IMPACT ON EMPLOYMENT



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Amid the COVID-19 outbreak in the People's Republic of China ("PRC" or "China"), PRC authorities have undertaken resolute measures in order to contain the spread of the COVID-19 epidemic. Amongst others, various policies on national, provincial and local level to safeguard public health have been issued, complimenting or reinforcing existing statutory PRC labour laws. These policies provide, for mandatory extension of PRC public holidays, mandatory or recommended quarantine measures, restrictions of movement or access to workplaces as well as requirements for enhanced sanitary standards – all having different effects on employment relationships in the PRC.

Holiday Extension and Suspension of Business Operations

In a first effort to curb the spread of the COVID-19 outbreak by avoiding the movement of individuals during the Spring Festival public holidays, the General Office of the State Council issued the Circular on Extending the 2020 Spring Festival Holiday ("Circular") on 27 January 2020. According to this Circular, the period for the Spring Festival public holidays was extended from 30 January 2020 until including 2 February 2020. During the extended public holidays, employees were not required to appear at or carry out work while receiving full payment of their salaries. According to the Circular, employees required to work during such period shall be offered compensatory leave, or shall receive overtime payment in accordance with applicable PRC laws and regulations.

This national level Circular was supplemented subsequently by various regulations on provincial level, all of which being subject to continued changes and therefore requiring close attention by both employers and employees. The provincial level regulations differ in terms of scope from one another, reflecting the extent of impact of the COVID-19 on the respective provinces. Depending on the specific scope thereof, companies shall arrange the further suspension of business operation/production, provide the required work arrangements (e.g. Home Office) and make due payments of salaries or other compensations, as applicable.

Certain companies deemed indispensable to sustain public health and order (e.g. public utility operations, businesses operating in virus prevention/control and businesses attending to daily life supply) are exempt from the aforementioned national and provincial level policies and required to sustain regular business operations.

Remuneration

On 24 January 2020, the PRC Ministry of Human Resource and Social Security issued the Notice on Properly Handling Labour Relationships during the Prevention and Control of Pneumonia Epidemic of New Coronavirus Infection (“**HRSS Notice**“). This State level HRSS Notice provides, amongst others, stipulations on remuneration during the COVID-19 epidemic and for the time after the suspension of business operations/production due to governmental policies. According to such HRSS Notice, companies shall:

- pay salaries to its employees as provided in the respective labour contract during the first payment cycle in case such company suspends its business operation/production due to COVID-19;
- pay salaries to its employees no lower than the applicable local minimum wage in case such company suspends its business operation/production due to COVID-19 beyond the first payment cycle, subject to the employee having provided his/her workforce to the company during such period;
- pay to its employees an amount no lower than the applicable local living expenses in case such company suspends its business operation/production due to COVID-19 beyond the first payment cycle, subject to the employee not having provided his/her workforce to the company during such period;
- pay salaries to its employees as provided in the respective labour contract in case such employee (a) is proven to be infected with COVID-19, (b) is suspected of being infected with COVID-19, (c) was in close contact with an individual proven to be infected with COVID-19, or is suspected of being infected with COVID-19.

The salary shall be paid during the period such employee is absent from work in order to receive medical treatment, medical observation, or who is subject to quarantine or other emergency measures taken by the government.

Flexible Work Arrangements and Work Protection

The HRSS Notice provides companies with certain flexibility in light of the COVID-19 to further arrange their business operations/production after the suspension thereof due to governmental policies.

In case companies experience difficulties in upholding their business operation/production, such companies may adjust their employees' salaries and time shifts in order to avoid a worst case scenario of mass layoffs. Such adjustments require the prior consultation with employees; however the HRSS Notice does not specify the consultation procedure. It is therefore recommended to obtain the consent of all employees or align with the trade union, if any.

Companies that do not require on production sites and specific equipment to carry out their business operations may also consider offering employees Home Office solutions, e.g. by using online meeting software, online collaborative editing software, etc. During Home Office periods, employees shall receive the salary as agreed in the respective labour contract.

Employers in the PRC have a general obligation to provide employees with a safe and healthy work environment. In light of the COVID-19, companies shall provide to their employees sanitation protection against the COVID-19 virus including but not limited to regular disinfection of the office, monitoring and registration of non-staff visitors, etc. According to a press conference of the State Council in response to the COVID-19 epidemic held on 11 February 2020, companies shall also provide employees with respiratory masks upon return to the workplace.

Certain local governments have further issued detailed action plans for business to prevent the spread of the COVID-19 virus at the workplace. An employer's failure to comply with such governmental action plans may lead to administrative penalties as provided by the Implementing Measures of the PRC Law on the Prevention and Treatment of Infectious Diseases and the PRC Emergency Response Law.

Labour Contract Termination and Labour Disputes

According to the HRSS Notice, companies cannot unilaterally terminate the labour contract with employees while employees receive medical treatment, are in medical observation, or are subject to quarantine or other emergency measures taken by the government, or in case a company suspends its business operations due to COVID-19. Companies are in particular prohibited from terminating a labour contract based on Art. 40 PRC Labour Contract Law – unilateral termination by the employer with prior notice – or Art. 41 PRC Labour Contract Law – massive layoff – unless due to an employee’s serious misconduct.

A labour contract that happens to expire during the aforementioned period shall be automatically extended for the same period.

Reporting Obligations

The PRC government encourages companies and individuals in participating in the prevention and treatment of infectious diseases. According to the PRC Law on the Prevention and Treatment of Infectious Diseases, employers that learn of a coronavirus or suspected case shall report such case to the relevant local health or disease prevention authority. Companies shall therefore report employees either infected or suspected to be infected with the COVID-19 virus as well as recent travel information to the competent local authorities. The collection and submission of such personal information shall, however, comply with relevant PRC laws concerning the protection of personal information. Therefore, companies are well advised to obtain prior written consent from employees for such reporting purposes. In any case, the collection and disclosure of personal information shall be kept to a minimum.



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02/2020