

Legal and Regulatory Compliance Issues in relation to the Coronavirus Outbreak

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Latest Local Policies on Postponing Work Resumption and Suggestions on Flexible Work Arrangements

Q: Which companies shall opt to postpone the resumption of work? When to resume work?

All businesses shall comply with the latest policies issued by relevant local governments to postpone the resumption of work after the extended public holiday **except** those engaging in

- the operation of the essential utilities (water, gas, power supply, telecommunications, etc.),
- epidemic emergency management (medical supplies, protective medical equipment, etc.),
- daily necessities business (supermarkets, production and supply of food etc.) and
- any other activities or businesses essential to the national economy and people's livelihood (particularly the steel and chemical manufactures in Nanjing, Jiangsu Province requiring uninterrupted production).

China's central bank and relevant financial regulators issued a notice on 1 February 2020 stating that the financial sector shall resume business from **3 February 2020**, i.e. the stock market reopened **on 3 February 2020**.

Beijing, Shanghai, Guangdong, Jiangsu and most other provinces and regions require a resumption of work no earlier than **24:00 on 9 February 2020**.

Hubei Province: Work resumption shall not be earlier than **24:00 on 13 February 2020** (the CNY Holidays in Hubei Province extended to 13 February 2020, which is also applicable to those who are employed elsewhere but physically in Hubei at the moment).

Q: What are the salary standards during the extended CNY holidays and the postponed time period?

Extended CNY holidays (i.e. 31 January 31 - 2 February or 13 February in Hubei): Employers shall provide leave credit for those employees who have to resume working in the specified sectors (see previous slide); otherwise no less than 200% of the regular salary shall be applicable.

Postponed time period (3 - 9 February except Hubei): Salary standards for those employees who do not work during the period shall be subject to the existing employment contracts.

HOWEVER, with respect to employees who are responsible for the **necessary supportive work, or working from home** during the period, local governments have issued different compensation requirements (controversial to some extent):

- **Beijing**: the government has remained silent on the issue up to now.
- **Shanghai**: employees shall be entitled to overtime work compensation, namely, 200% overtime pay or leave credit
- **Guangdong, Jiangsu (Suzhou/Wuxi)**: employees shall be entitled to the normal salary; for the weekend (8-9 February) overtime work compensation, namely, 200% overtime pay or leave credit.

Q: What procedures are required for work resumption?

Under the current epidemic emergency situation, local policies vary in different areas:

- **Beijing:** The employers may arrange the work flexibly.
- **Shanghai:** if any company wishes to resume work earlier, an application shall be made and prior approval required.
- **Jiangsu (Nanjing/Suzhou/Wuxi etc.):** if any company wishes to resume work earlier, an application shall be made and prior approval required; the company shall carry out quarantine inspection and ensure that health protection measures are in place before work resumes.

Local authorities and epidemic emergency management offices shall be consulted in advance as the situation keeps changing.

Q: What are the legal consequences if a company fails to comply with the required epidemic emergency measures?

Pursuant to **the Emergency Response Law**, if any entity fails to fulfill its legal obligations during the epidemic emergency period, fails to take required preventive measures, or fails to timely eliminate an identified risk which leads to the occurrence of a serious emergency, the local government may impose **administrative penalties** such as business suspension, license/permit being revoked or repealed, fines of RMB50,000 - RMB200,000. Where serious enough, the violation/incompliance can be subject to more severe **public security penalties**.

Furthermore, any graver violation may be subject to **criminal liabilities** in relation to the following crimes:

- Negligence endangering public safety;
- Fabricating and intentionally spreading false information to cause public panic;
- Dereliction of duty or willful misconduct;
- Production and sale of counterfeit and /or defective products (including medical products and equipment).

Q: If any employee has been or is suspected to have been infected with 2019-nCoV and is quarantined/isolated for observation and/or medical treatment, what compensation shall be paid?

The following four types of employees shall be paid the regular salary.

1. Diagnosed with 2019-nCoV infection;
2. Suspected with 2019-nCoV infection;
3. Close contact person during the quarantine for medical treatment or observation; and
4. Unable to work due to the relevant epidemic emergency control measures.

Upon the expiry of medical observation and quarantine or when the relevant epidemic emergency control measures are terminated, where the diagnosed patient needs medical treatment and/or recuperation, relevant sick pay shall be applicable.

Q: If any employee cannot return in time to their workplace and/or has to work from home due to the epidemic public transport controls and/or self-quarantine measures, what compensation shall be paid?

For those who cannot return promptly to their workplace and cannot discharge their work properly, the employer may arrange the relevant employees to **take his/her annual leave** first.

Beijing:

If the employee is unable to work for a longer period (annual leave is insufficient), subject to the mutual agreement between the employer and the employee, the company can assign him/her to a **job post standby (待岗)**, in such case, no less than 70% of Beijing's minimum wage standard (RMB 2,200 * 70% = RMB 1,540 per month) shall be applicable.

For the employee on a **business trip**, if he or she cannot promptly return to the workplace in Beijing due to the epidemic emergency situation, the regular salary shall be paid.

Subject to mutual agreement, where the employee **works from home**, the employer shall pay the regular salary.

Q: How about a company that has to suspend its business or production due to the epidemic outbreak?

Within one payroll period (30 days maximum), the regular salary is to be paid as normal.

Beyond a payroll period, subject to the consultation and agreement of the new payment standards reached with the employee (no less than the applicable minimum local wage), compensation shall be paid according to the actual work carried out by the employee.

Where the employer has not arranged the employee to work, the employer shall pay the employee a certain percentage of the applicable minimum local wage as a **living stipend**, e.g.

- Beijing: 70%;
- Shanghai: 100%;
- Guangdong, Jiangsu and Hubei: 80%.

The living stipend shall be paid continuously till the work resumption or the termination of the employment relationship.

Q: During the epidemic period, can a company terminate the employment contract with an employee who is quarantined/isolated for medical treatment or observation?

An employer is **not** allowed to terminate the employment contract according to Article 40 (dismissal without cause) or Article 41 (economic layoffs) of the *Employment Contract Law* with an employee who has been

- diagnosed with 2019-nCoV infection; or
- suspected with 2019-nCoV infection; or
- classified as close contact person required for quarantine; or
- unable to work due to the relevant epidemic emergency control measures.

During the quarantine period, if the relevant employment contract expires, the actual expiry date shall be **extended** to the conclusion of the medical treatment/observation period/quarantine period, or the termination of the epidemic emergency measures.

However, an employer may exercise its **termination right** in the following scenarios:

- an employee commits a serious breach of the rules and policies, code of conduct (i.e. eligible for a dismissal with cause);
- an employee is charged for fabricating or intentionally spreading false information to cause public panic, or other violation(s) of the epidemic emergency measures.

Q: During the epidemic period, how to deal with social insurance payments, and any negative impact on a company's good standing?

According to the notice issued by the Ministry of Human Resources and Social Security ("MOHRSS") of the PRC, if there are any delayed registrations and/or overdue social insurance payments, a **grace period** shall be applied (generally speaking of three months after the epidemic emergency period is over) and the company's good standing shall not be adversely affected.

Doctors and nurses and other related personnel who are participants of the social insurance scheme and suffer work-related injuries, shall be entitled to preferential treatment. Those personnel may submit less comprehensive documentation as work-related injury evidence, and enjoy the fast track payment of the work-related injury compensation.

Local counterparts of the MOHRSS have issued notices to ensure that social insurance treatment for the normal employers and employees will not be affected by the epidemic, and to promote handling of matters without the need for face to face meetings.

Q: During the epidemic period, how to handle employment dispute cases?

If the party is unable to apply for an employment dispute arbitration within the statutory time limit due to the epidemic, **the limitation period for arbitration shall be suspended.**

If the party or the attorney is unable to attend the hearing at an arbitration institution due to the epidemic, he or she may apply to **postpone the hearing**.

If the employment dispute arbitration tribunal is unable to conclude a case within the prescribed time frame due to the epidemic, the relevant **time frame may be extended** accordingly.

Q: Can an employer refuse to hire job candidates from those areas badly affected by the epidemic?

NO. That will be regarded as employment discrimination and unlawful.

From the recruitment point of view, an employer shall avoid differentiating job applicants on the grounds of

- **geographical identification** (such as "Wuhan people"/"Hubei people") and/or
- **medical history** (such as "once quarantined/isolated").

Once inappropriate conduct is discovered, it shall be rectified immediately; otherwise relevant liabilities may be incurred.

In addition, employers shall be particularly minded to protect employees' information collected for the purpose of the epidemic control, reduce unnecessary disclosure and dissemination, take appropriate **confidentiality** measures.

"Necessity" or "minimum necessity" principle stipulated in *the Cybersecurity Law* shall be cautiously observed when it comes to the **information collection** and use of collected information.

Suggestions for flexible work arrangements during the epidemic emergency period

1. Flexible leave arrangements (corporate annual leave as well as the national public holidays)
2. Work from home or standby/on-call
3. Work in shifts
4. Work/production suspension
5. Job post standby (待岗)
6. Employment suspension
7. Work/leave rotation
8. Comprehensive working hours management system (综合计算工时制度)(quarterly/semi-annually/annually)

Rent Relief or Termination of the Lease Agreement Due to the Epidemic Outbreak?

Force Majeure & Fundamental Change of Circumstances

- Force Majeure (不可抗力)
- Fundamental Change of Circumstances (情势变更)
- The nuances between the two legal concepts could be critical under the Chinese law

- Based on judicial practice over the period of the SARS epidemic 17 years ago, unfortunately there is no simple and straight answer in respect of the relevant contractual liabilities
- Generally speaking, where Force Majeure is established, contractual parties may be released, to the possibly maximum extent, from the relevant obligations and liabilities, particularly when rent relief and/or lease termination are desired
- Contractual rights, obligations and liabilities shall be carefully balanced between the parties when there has been a fundamental change of circumstances
- Case by case analysis is needed, and in any event, it is advisable for parties to consider possibly available relief in advance

Ten Preferential Policies – Suzhou, Jiangsu Province

(Effective Date: 3 months from 2 February 2020)

- Ensure that the credit line for small and micro enterprises shall not decline
- **Ensure that financing costs of small and micro enterprises shall be reduced**
 - Loan interest rate shall fall by 10%
- Policy banks shall play the roles of "National Teams"
 - Provide the first RMB 2 billion as the emergency financing quota
- Encourage the financial institutions to provide supportive financial services
- **Implement policies to assist enterprises and maintain job stability**
 - Enterprises that make few or no job cuts shall be reimbursed 50% of the unemployment insurance premiums they paid in the previous year
- **Defer payment of social insurance contribution**
 - The maximum delay shall be six months
- **Rent reduction for the SMEs**
 - For SMEs who rent state-owned commercial property for their operations, one month's rent shall be exempted and two months' rent shall be halved.
 - As regards, SMEs renting business premises from non state-owned landlords, the landlords shall be encouraged to reduce the rent for the tenants, and the specific matters shall be settled by both parties through negotiation
- **Reduced taxes and charges for the SMEs**
- Deferred tax payments
- Support SME incubation parks

Impact of the WHO Declaration - Public Health Emergency of International Concern

The following industries and their upstream and downstream sectors will be mostly affected:

- tourism
- restaurants and catering
- hotels
- real estate
- film and entertainment

Air transport and shipping markets suffer: safe harbour/deviation issues

Obstruction to international trade

- logistics will be slowed down and contract performance will be frustrated
- the China Council for the Promotion of International Trade (CCPIT) can issue a certificate of force majeure but the actual legal effect of such certificate remains to be further observed.

Expat employees/mobile workforces cross-border movement being subject to restrictions

General Legal Issues in relation to the Epidemic Outbreak

Initiatives can be taken from the general legal point of view

- Review the contracts, issue timely notices, and seek mutual understanding
- Initiate the necessary consultation as soon as possible, endeavoring to mitigate any losses as soon as you can
- Negotiate realistic supplementary agreement(s) as necessary
- If negotiation fails, preserve evidence and prepare for future dispute(s) when unavoidable

Employer Response

Company's Emergency Management

It is necessary to set up an internal epidemic emergency management team to ensure a real-time response.

- **Head:** The company's most senior executive shall head the team.
- **Deputy Head:** [suggested to be the senior executive in charge of production safety and employee health], responsible for formulating and implementing specific internal measures.
- **[EHS/Work Safety Department]:** responsible for the emergency supplies, epidemic information collection and assisting in formulating and implementing specific internal measures.
- **[Admin Department]:** responsible for the HR, salary, welfare, leave arrangements and assisting in formulating and implementing specific internal measures.
- **[PR Department]:** responsible for responding to emergency incident(s) and the company's crisis management, directly interfacing government authorities as well as the media etc.

Establish a sound internal management system:

- **Epidemic emergency management:** monitoring employees' health conditions.
- **Holiday/leave and work resumption management:** ensure resumption of working in a realistic and orderly way.
- **Work health protection management:** provide training on the work health protection & quarantine measures.

- **Other** management: ensure statutory duties duly discharged and ensure effective communication with regulators and relevant authorities.
- **Psychological counseling**

Toolkit of Relevant Notification and Worksheet

General Notice

- General Notification - Novel Coronavirus Epidemic Outbreak
- Spreadsheet/Statistical Table of Employees' Travel Histories during the CNY Holidays

Protective Measures

- Notification of Working from Home
- Notification of Arranging Annual Leave
- Notification of Business Suspension
- Suspected Infected Symptoms and Statistical table/Spreadsheet of Estimated Resumption Date
- Notification of Work Resumption (Absence Inquiry)
- Notification of Job Post Standby
- Notification of Advising Suspected Infected Employees to Undergo Quarantine and Medical Treatment and Observation
- Spreadsheet/Statistical Table Monitoring Employees' Daily Temperature

Internal Communication

- Member List and Contact information of the Emergency Management Team

Relevant notification templates/forms can be provided, please send request email to master@llinkslaw.com

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