

Impact of the Coronavirus outbreak on Employment Relationship

17 February 2020

On January 31, 2020, the World Health Organization has announced the outbreak of novel coronavirus (2019-nCov), sourced from Wuhan, as a Public Health Emergency of Concern. To minimize the personnel mobility and to curb the epidemic spread, local regulators have issued various notices and rules regarding cessation of work and stabilization of employment relations.

The State Council (China's cabinet), in the first place, published *the Notice of the General Office of the State Council on Extending the Chinese New Year Holiday of 2020* on January 27, 2020, providing that the seven-day Chinese New Year holiday will be extended to February 2, 2020¹, following which, local government departments announced one after another that the companies within its jurisdiction (exclusive of those companies that provide urgent and necessary public services, or are related to epidemic prevention and control, local people's livelihood and social and public interests) cannot resume work before February 10th (please see the appendix hereto for the extended schedule of 25 cities and provinces).

Apart from the notices regarding the cessation of work, the Ministry of Human Resources and Social Security ("MOHRSS") and its local bureaus also issued specific notices to cope with the novel coronavirus outbreak.

Employment relations cannot be affected by the Novel Coronavirus

On January 24, 2020, the MOHRSS released the *Notice on the Proper Handling of Employment Relations during the Period of Epidemic Prevention and Control* ("**Notice on Employment Relations**"), which provides that employers cannot terminate the employment contract of employees, who are kept in a quarantine or medical observation, or other quarantine/emergent measures adopted by the government due to the novel coronavirus infection, suspected infection, or being deemed as close contacts thereof and cannot provide services during this period, in accordance with Article 40 (e.g., termination with prior notice due to the reason of employee) and Article 41 (e.g., redundancy/mass layoffs) of the *Contract Law of the PRC*. If the employment contract expires during this period, the employment contract should be automatically extended to the end of the medical treatment, the medical observation, or the period of quarantine or emergent measures taken by the government departments.

¹ According to the *Notice of the General Office of the State Council on Extending the Chinese New Year Holiday of 2020*, the extended Chinese New Year holiday (from January 31 to February 2) will be deemed as rest days and compensatory time off should be arranged. It is generally understood that overtime payment (200%) is required to be paid if the employee under standard working hours system must work and cannot be arranged to take rest alternatively.

In the spirit of this nationwide notice, local bureaus of the MOHRSS (like Beijing, Shanghai, Guangdong Province, Zhejiang Province and Hubei Province) all re-address this rule and issue its own specific policy and clarification.

Impact of the Novel Coronavirus on companies suffering difficulties in production

The Notice on Employment Relations also provides that for companies those are experiencing difficulties in operation or production due to the outbreak of novel coronavirus, they can take measures, such as negotiating with the employees to adjust the remuneration, rotating shifts, shortening working hours, in order to avoid laying off employees to the greatest extent possible. Qualified companies can apply for subsidies for stabilizing employment according to local rules.

If a company stops operation or production within a payment cycle (no more than 30 days), the company must pay the normal monthly salary to its employees based on the underlying employment contract. If it goes beyond a payment cycle and the employee has provided normal services, the salary paid to its employees cannot be lowered than the local minimum salary standard. On the other hand, if the employee does not provide normal services, the company should pay living costs to the employees according to the local rules and policies, which are different from city to city, e.g., no less than 70% of the minimum average salary in Beijing and Hubei Province, 80% in Guangdong Province and 100% in Shanghai.

Similarly, local government departments also launched varieties of financial and funding supporting measures to qualified enterprise and industries, such as to small and medium-sized enterprises, key enterprises for epidemic prevention and control (such as pharmaceutical and medical devices companies) and industries that are significantly impacted by the outbreak of novel coronavirus (like tourism, catering, transportation and lodging), to help them survive the novel coronavirus.

Cessation of work and flexible working arrangement

Following to the *Notice of the General Office of the State Council on Extending the Chinese New Year Holiday of 2020* issued by the State Council, the local provincial bureaus of the MOHRSS start taking the lead to issue its own rules and policies in this regard.

In the notice published by Shanghai Municipal Human Resources and Social Security Bureau on January 27, 2020² and its accompanying Q&A³ on January 28, 2020, Shanghai Municipal Human Resources and Social Security Bureau expressly clarified that companies that need to resume work before February 10, 2020 must report to the local labor authority for approval in advance, and that the extended Chinese New Year holiday by both the State Council (from January 31 to February 2) and Shanghai Municipal Human Resources and Social Security Bureau (from February 3 to February 9) are deemed as rest days (same as Saturday or Sunday) and thus the company must either arrange alternative rest days or pay overtime compensation, i.e., 200% of normal daily wage. It is worth noting that Shanghai Municipal Human Resources and Social Security Bureau seem to be the only labor authority that requires employers to pay overtime payment during the extended Chinese New Year (from February 3 to February 9). Similar with the policy of resumption work adopted by Shanghai Municipal Human Resources and Social Security Bureau, other local bureaus of the MOHRSS also release notices/policies regarding work stoppage and measures to stabilize employment relations. Different from the work stoppage, Beijing Municipal Human Resources and Social Security Bureau, the local government in Hainan

² The official website is [here](#).

³ The official website is [here](#).

Province and Sichuan Province encourage its local enterprises to adopt flexible working arrangement without further extending the Chinese New Year holiday.

In observation of local requirement for public health response, the local government departments require employers to inform their Chinese employees about government warnings discouraging non-essential travel, especially to Hubei Province in China, and to be sure that their employees abide by these restrictions unless circumstances require otherwise, and personnel who have travel history to regions most affected by the novel coronavirus (Hubei Province) and even personnel from other focus areas of the novel coronavirus to undergo 14 days' self-quarantine to identify and self-monitor for suspected symptoms. In light of the Notice on Employment Relations, it is generally understood that normal salary should be paid during the mandatory quarantine period due to the outbreak of novel coronavirus, while for the encouraged self-quarantine period, employers may take the *Opinions on Properly Handling the Work of Stabilizing Employment Relations and Supporting the Resumption of Work and Production during the Period of Epidemic Prevention and Control ("Notice on Resumption of Work")* jointly issued by the MOHRSS, All-China Federation of Trade Unions, China Entrepreneur Association, All-China Federation of Industry and Commerce on February 7, 2020 for reference, which encourages employers to adopt flexible working arrangement, e.g., remote working through telephone or website; where flexible working arrangement is technically impossible, employers are encouraged to negotiate with employees to arrange to take annual leave and other self-established welfare time-off. The Notice on Resumption of Work also encourages employers to implement flexible working hours after official resumption of work, e.g., staggered and flexible working hours, to avoid resulting in the gathering or concentration of employees.

Impact of the Novel Coronavirus on statute of limitations

Pursuant to the Notice on Employment Relations, if, due to the outbreak of novel coronavirus, a party cannot apply for employment arbitration within the statute of limitations, the statute of limitations will be suspended and will continue to run when the cause of suspension is eliminated. If the arbitration institution cannot hear the case within the statutory time limit due to the outbreak of novel coronavirus, the hearing can be postponed accordingly as well.

Recommendations to Chinese companies

1. To take appropriate prevention measures

The pneumonia caused by novel coronavirus (COVID-19) is treated as an A Class infectious disease in the course of epidemic prevention and control pursuant to the announcement released by National Health Commission (No. 1 of 2020) on January 20, 2020. In accordance with the Prevention and Treatment of Infectious Diseases Law of the PRC and its implementing rules, and the Law on Penalties for Administration of Public Security, companies that refuse to carry out the decision or order issued according to law by the people's government in a state of emergency would be subject to a warning or fine penalty; and if the circumstances are serious, the legal representative would be detained for not less than 5 days but not more than 10 days, apart from the fine penalty. Besides, if the misconduct of the company causes the spread or a grave danger of the spread of an A Class infectious disease, a criminal penalty may even be triggered. Furthermore, in accordance with the Labor Law of the PRC, employers are also obliged to provide employees with employment safety, health conditions and necessary employment protection supplies.

In light of the Notice on Resumption of Work, employers that are about to resume work according to local rules, should provide appropriate daily epidemic prevention and employment protective measures apart from flexible working arrangement to be taken, such as prompt disinfection of working places and offices, keeping the office environment sanitary and clean, maintaining air circulation in the office, ensuring that the air-conditioning system

or exhaust fan operates normally and cleaning the filter of air conditioners regularly, providing sanitary protection supplies (like masks, disinfectants, infrared temperature detectors and other supplies for epidemic prevention and control), cleaning up the office garbage timely, monitoring the health status of employees for suspected symptoms, providing psychological counselling and assistance and encouraging employees to take more prudent personal safety protective measures. If an employer suspects an employee has been exposed to the novel coronavirus, becomes ill and/or the employer suspects the employee has been exposed to someone with the virus, necessary protective measures should be taken.

2. To report relevant information to the local disease prevention and control institution or medical institution

Pursuant to the Prevention and Treatment of Infectious Diseases Law of the PRC and the Measures for the Administration of Information Reporting on Monitoring Public Health Emergencies and Epidemic Situation of Infectious Diseases, employers have to promptly report the information on public health emergencies and epidemic situation of infectious diseases to the disease prevention and control institution or medical institution if they discover any infectious disease patient or suspected patient and must not conceal, delay the report of or make a false report of such information. Moreover, the employer has to cooperate with the on-site investigation, inspection and evidence collection of the infectious disease conducted by the health administrative department based on the Prevention and Treatment of Infectious Diseases Law of the PRC.

In addition, the company also needs to collect and report relevant information relating to the health status of its non-local employees and employees who have travel history to focus areas of the novel coronavirus, symptoms of fever, fatigue, dry cough, and any abnormal situations in a timely manner during the outbreak based on the local rules.

3. To negotiate with employees before revising any major terms of employment contract

During the special period of epidemic prevention and control, companies need to take necessary actions in response to the local public health concerns and pay attention to relevant notices published by local regulators from time to time. Fighting against the outbreak of novel coronavirus is an uphill battle and may take some time. During this period, companies would very likely expose to varieties of operation difficulties and intensifying contradictions with employees. In such case, it is advisable that companies should try best to negotiate with the employees and reach a mutual agreement when revising the major terms of employment contract is necessary, such as adjustment of the remuneration, shift rotation and shortening of working hours.

If it is necessary to suspend or terminate the employment or take other measures unilaterally, it is prudent that the company should check legal basis and consult with legal counsels, in order to ensure compliance and avoid disputes.

Appendix – Example list of the Cities and Municipals that has Extended Holiday

No.	Cities/Province	The Date to Resume Work
1.	Shanghai Municipal	February 10
2.	Beijing Municipal	Flexible working arrangement is encouraged before February 10
3.	Chongqing Municipal	February 10
4.	Zhejiang Province	February 10
5.	Guangdong Province	February 10
6.	Jiangsu Province	February 10
7.	Yunnan Province	February 10
8.	Shandong Province	February 10
9.	Fujian Province	February 10
10.	Anhui Province	February 10
11.	Jiangxi Province	February 10
12.	Guizhou Province	February 10
13.	Heilongjiang Province	February 10
14.	Hebei Province	February 10
15.	Henan Province	February 10
16.	Liaoning Province	February 10
17.	Inner Mongolia Province	February 10
18.	Guangxi Zhuang Autonomous Region	February 10
19.	Xi'an Municipal	February 10
20.	Shanxi Province	February 10
21.	Jilin Province	February 10
22.	Hunan Province	February 10
23.	Hubei Province	February 21
24.	Wenzhou Municipal, Zhejiang Province	February 17
25.	Sichuan Province	Flexible working arrangement is encouraged

Contacts



Sherry Gong
Partner, Beijing
sherry.gong@hoganlovells.com



Christina Zhu
Associate, Beijing
christina.zhu@hoganlovells.com

www.hoganlovells.com

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