

Client Alert

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What should employers in China be doing in the face of the coronavirus outbreak?

The coronavirus outbreak originating in Wuhan, the capital of Hubei province of the People's Republic of China (PRC), has captured the world's attention as the number of cases continue to rise rapidly and the disease continues to spread.

In light of this extraordinary occurrence, companies operating in China have been scrambling to find out what exactly are their obligations under the law in the face of this outbreak and what should they be doing vis-à-vis their employees. In this respect, long-standing general laws and regulations related to public health and work safety, as well as emergency measures recently issued by the government to specifically deal with the coronavirus outbreak, need to be followed.

Pursuant to a notice issued by the the National Health Commission (NHC) of the PRC on January 20, 2020 ("**NHC Notice**"), the novel coronavirus has been classified as a Class B level of "*communicable disease*" under the *PRC Law on the Prevention and Treatment of Communicable Diseases* ("**Communicable Diseases Law**"), though certain measures generally applicable to Class A diseases (the most serious type) should apply to the coronavirus.

During this critical period, the PRC central and local governments are introducing new regulations and policies almost daily, to prevent and contain transmission of the coronavirus. We set out below the responses to some frequently asked questions about what employers should be doing. Companies should continue monitoring national and local developments in cities where they have operations.

1. What are an employer's general obligations to its employees in relation to providing a safe working environment?

Employers in China have a general obligation to provide employees with safe and healthy working conditions. Failure to meet this obligation may result in liability for employers including potential government sanctions.

The employer bears legal obligations to prevent and control communicable diseases pursuant to the Communicable Diseases Law and its implementing measures. As summarized below, employers must:

- (1) Cooperate with the prevention and control measures taken by the disease prevention and control authority and the medical institutions;
- (2) Provide truthful information to the local disease prevention and control authority and the medical institutions;
- (3) Promptly report to the local disease prevention and control authority and the medical institutions any infectious cases or suspected infectious cases;





- (4) Report to the disease prevention and control authority and carry out sanitary measures for communicable disease prevention and control if the number of mobile employees are 200 or more;
- (5) Continuously pay salary to employees as normal while they are subject to quarantine measures;
- (6) Not discriminate against any employees confirmed or suspected to have contracted the communicable disease;
- (7) Carry out strict disinfection measures in the place contaminated with the pathogens of infectious disease under the direction of the disease prevention and control authority or in accordance with the authority's sanitary requirements; and
- (8) Cooperate with the inspections conducted by the health authority.

Note that, on January 24, 2020, the Ministry of Human Resources and Social Security issued a notice relating to appropriate handling of employment relationships ("**MOHRSS Notice**"), requiring the employers to follow below rules:

- (1) For any employees who have been confirmed to have the novel coronavirus infection, who are suspected of having the coronavirus infection, or who have been in close contact with those confirmed or suspicious cases, and have to be absent from work in order to receive medical treatment, be under medical observation, be subject to quarantine or other emergency measures taken by the government ("**Protected Period**"), the employer shall pay salary to the employees as normal during the Protected Period;
- (2) During the Protected Period, the employees cannot be terminated unless for serious misconduct;
- (3) If the employee's employment contract expires during the Protected Period, the employment contract shall be automatically extended until the Protected Period ends;
- (4) If the coronavirus outbreak causes difficulty in business operations of the company, the company may consult with employees to adjust their salary, flexibly arrange work schedules, rest shifts and/or shorten working hours, in order to avoid the worst case scenario of mass layoffs;
- (5) If the company suspends business operations as a result of the coronavirus outbreak, during the first pay cycle (i.e., the first monthly period), the company shall pay salary as specified in the employment contract; for the period beyond the first pay cycle, the company shall (i) pay salary no less than the local minimum wage standard to the employees who has performed work and (ii) pay a living fee to the employees who have not performed any work (the living fee amount shall be determined in accordance with the local measures of the relevant province or the municipality directly under the central government).

In addition, different cities and provinces have issued their own local measures in reaction to the outbreak. Updates are issued on an almost daily basis by local authorities in different cities in provinces, so companies should carefully monitor the local updates in the city where they have operations and employees.



According to the Communicable Diseases Law, an employer could be civilly liable if the employer's non-compliance (e.g. failure to report to the health authority or failure to take prevention and control measures as required by the health authority) causes the spread of the communicable disease and results in physical and economic damages to other individuals. Some local governments (such as in Zhejiang province and Shenzhen municipality) have issued detailed action measures for employers to follow after the re-opening of the business to prevent the spread of disease in the workplace. The employer's failure to comply with government mandates could lead to administrative penalties as provided by the implementing measures of the Communicable Diseases Law and the PRC Emergency Response Law. In a serious situation, the employer may even face criminal liability for noncompliance.

2. Can an employer require employees to work from home?

Many employers in China are asking their employees to work from home during this period, which is also encouraged by some local governments as a flexible arrangement for reducing any congregation of people into crowds.

Many provinces and cities have issued local notices requiring a delayed date for the resumption of work / office re-opening after the Chinese New Year holiday. If employees work from home before the official date for resumption of work / office re-opening, salary payment shall be arranged in accordance with the applicable local rules (e.g., paying normal salary or overtime pay).

3. Can an employer impose travel restrictions on employees?

In order to contain the coronavirus outbreak, Wuhan has been on lock down and people in Wuhan have been stopped from leaving Wuhan. Strict quarantine measures have been implemented by the government on the movement of people, especially those from Wuhan or Hubei province.

Subject to local rules, employers should restrict any employees who recently have travelled to Wuhan or Hubei province from returning to the city where they work and require any employees who travel back to their work location to follow local quarantine requirements. In some cities, employers are prohibited from instructing employees to return from an epidemic hot-zone to the city where they work before the date of the resumption of work as determined by the local government.

The employers should follow the local rules and collect employees' travel and health information and report this information to the government if and as required. Travel plans should probably be carefully reviewed and monitored for a period of time even after the re-opening of the business. Employers may face resistance from employees for travel arrangements in the near future and should be prepared for alternative actions and reasonably limit such arrangements to the extent possible.

4. What are an employer's obligations if an employee contracts the coronavirus?

If an employee has been, or is likely to have been, exposed to the risk of contracting an infectious disease, the employee must be placed in quarantine or isolation for medical observation or treatment under the Communicable Diseases Law. According to the fourth version of the *Novel Coronavirus*



Pneumonia Diagnosis and Treatment Scheme announced by the NHC on January 27, 2020, the incubation period for the coronavirus is normally from 3 to 7 days and usually no longer than 14 days. Currently 14 days' quarantine or isolation duration is adopted for medical observation.

An employee who contracts the coronavirus and is placed in quarantine or isolation should be paid normal salary. In addition, an employer must pay full wages to an employee placed in quarantine who was suspected to have contracted the coronavirus but later was found to be not infected.

Note that employees during their medical treatment period are protected from termination of their employment. During the Protected Period as provided in the MOHRSS Notice, the employees cannot be terminated unless for serious misconduct and, if the employee's employment contract expires during the Protected Period, the employment contract shall be automatically extended until the Protected Period ends.

If the employee's infection is detected after the employer resumes work, the PRC government may require the employer to suspend operations temporarily to clean up and sterilize its premises. The employer shall follow the disease prevention and control measures taken by the local health authority.

5. Can an employer require an employee to stay out of the office?

After the employer resumes work following the date specified by the local authorities, it would likely be lawful for an employer to exclude an employee from its premises, if, for example, an employee shows symptoms of infection or has been exposed to someone who shows symptoms of coronavirus infection. Employers are also obliged to have their employees who travel back from hot-zones to stay at home for self-quarantine for 14 days in accordance with the local rules.

Employees who are required by the employer to remain out of the office as a precautionary measure should continue to receive their normal pay and benefits. Employers may consider other interim measures to the extent reasonably practicable, such as remote working or working from home.

6. Can an employer require its employees to have their temperature tested after resumption of work?

National law is silent on this; the general understanding is that it is lawful for an employer to ask its employees to undergo body temperature testing if there is a reasonable basis for doing so, as there is no prohibition in the law on this and some local governments have even recommended this as a type of preventative measure. The request would likely be considered reasonable to prevent the spreading of the virus and to ensure the health and safety of a company's employees. The employer should bear the costs of the temperature check, and the testing should be limited to testing whether the employee has symptoms of coronavirus.

Legal risks may arise for employers who take disciplinary action against any employees who refuse to undergo medical / temperature testing, but an employer may reasonably deny access to the office for employees who do not comply with such request.



7. Does an employer have any reporting obligations?

Yes. Under the Communicable Diseases Law, employers that learn of a coronavirus case or suspected case must report the case to the relevant local health or disease prevention authority. In addition, the *Administration Measures on Report of Monitoring Contingencies of Public Health and Communicable Disease* provide that employers are required to timely and truthfully report any information on communicable disease status, and any concealment, delay in reporting, or false reports are prohibited.

8. What can an employer do if the outbreak causes difficulty in business operations?

According to the MOHRSS Notice, if the outbreak causes difficulty in business operations of a company, the company may consult with employees to adjust their salaries, have employees work in shifts and/or shorten working hours, in order to avoid the worst case scenario of mass layoffs. The MOHRSS Notice does not specify how the consultation with the employees must be conducted.

If an employer suspends business operations as a result of the coronavirus outbreak, during the first pay cycle (i.e., the first month's period), the company shall pay salary as specified in the employment contract (i.e. employees should continue to receive regular pay). For the period beyond the first pay cycle (after one month), the company shall: (i) pay salary no less than the local minimum wage standard to employees who have performed some work and (ii) pay a "living fee" to the employees who have not performed any work (the living fee amount shall be determined in accordance with the applicable local regulations).

Employers cannot simply put employees on unpaid leave in any event.

9. What should employers be doing now?

Employers are advised to ensure compliance with current legal obligations by:

- undertaking required measures to prevent and control the spread of the coronavirus, and immediately report infectious cases or suspected infectious cases to local health authorities;
- providing a safe working environment to help protect employees from communicable diseases in the workplace (for example, disseminating face masks or hand sanitizer, frequently cleaning office space);
- collecting information on a routine basis regarding whether employees have been in contact with any persons who have contracted the coronavirus and whether they have visited epidemic hot-zones (particularly, Wuhan / Hubei); and
- complying with the employment-related regulations and rules issued by the PRC government at the national level and local level.

In addition, businesses can prepare a contingency plan to:

- assess how the business could be disrupted by 2019-coronavirus;
- consider continuous, temporary closure of office, work from home policies and/or possible leave for employees;



- publicize to employees the prevention and safety measures the company is taking; and
- institute contingency travel plans.

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