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Workers Left Stranded by Coronavirus Travel Restrictions on China



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Employment Guidelines for Employers in China During the Period of Epidemic Prevention of Coronavirus (III)

Coronavirus (2019-nCoV) has been identified as the cause of a new infectious disease, officially named "Coronavirus Disease 2019" (abbreviated "COVID-19"). Although the impact of the COVID-19 outbreak continues, employers across China have started to resume workplace operations. However, for the purpose of epidemic prevention and control, different measures such as traffic control and road closures are still in effect, while international flights have yet to be restored following large scale cancellations imposed by travel bans to and from China. Due to the widespread transportation restrictions, many employees, both at home and abroad, remain unable to return to their workplaces.

This paper will discuss four common scenarios involving employees who have been prevented from resuming their work due to transportation restrictions. This article was prepared in a Q&A format with the aim to provide employers with business interests in China, with a reference point for dealing with employment related issues stemming from the coronavirus epidemic.

Scenario 1:	Employees cannot return to China in time after a business trip abroad due to cancellation of international flights.
Scenario 2:	Employees cannot return to workplace in time after a domestic business trip due to epidemic prevention measures.
Scenario 3:	Employees cannot return to China in time after taking a vacation or visiting family abroad due to cancellation of international flights.
Scenario 4:	Employees cannot return to workplaces in time after taking a vacation or visiting family in other cities in China due to epidemic prevention measures.

Q1: For employees in Scenarios 1 to 4, can employers arrange annual leave unilaterally?

According to the *Opinions on Stabilising Employment Relationship and Supporting Employer's Resumption of Work and Production During the Period of Epidemic Prevention of the COVID-19* (the "MOHRSS Opinions") issued by the Ministry of Human Resources and Social Security and other 3

ministries¹, employees under Scenarios 1 to 4 (above) shall be identified as those who are unable to return to their workplace due to the epidemic, and employers may arrange for the employees to take annual leave on the basis of mutual consent. Many local governments, including Zhejiang province and Guangdong province² have successively promulgated regional regulations, which conform to the rules on the taking of annual leaves stipulated in the MOHRSS Opinions, i.e. the employee's consent is necessary.

However, according to the regulation stipulated by the Beijing municipal government³ for employees who are unable to return to Beijing and resume work in time due to the epidemic, employers may first consider arranging annual leave for them; for employees who are traveling for business purposes and are thus unable to return to Beijing due to the epidemic, their employers shall pay the normal salary during the period.

In respect of the annual leave, we noticed that in the Beijing regulation, employers are not required to reach a consensus with the employees, and a specific stipulation is prescribed for one particular scenario of salary payment, where employees are unable to return to the workplace due to the fact that they are/were traveling for work. In accordance with the regulation issued by the Beijing government, we are of the view that employers in Beijing may unilaterally ask employees under Scenarios 3 and 4 to use annual leave. For employees under Scenarios 1 and 2, employers in Beijing should refrain from unilaterally asking employees to use annual leave.

According to the current regulations of most regions in China, the basic principle for arranging the use of annual leave for employees who are unable to return to their workplace, remains as is, wherein mutual consent must be reached between the employer and the employee(s). However, if the local government has promulgated regulations that have different rules, like in Beijing, employers are advised to follow the local regulations and arrange annual leave for employees under Scenarios 3 and 4. In practice, to arrange the annual leave upon consultation, it is advisable that employers issue an annual leave notice to employees and require them to confirm such arrangement in written form, or by email, which will leave a trace of the consensus in the company's records.

In addition to the annual leave arrangement, for employees who are unable to return to work, the MOHRSS Opinions suggest the following measures for employers: (1) if possible, employers may arrange for employees to work from home in a flexible manner, such as communication via phone or internet, etc. and (2) for employees who remain unable to provide normal work after exhaustion of all leaves, or for other reasons, employers may implement the measure of Suspension of Work. Under the Suspension of Work, employers shall pay normal salaries within a salary payment cycle; where the Suspension of Work lasts longer than the first salary payment cycle and employees fail to provide their work, employers may pay basic living expenses to the employees concerned, which is equal to a proportion of the minimum wage standard of the place in China where the employees work.

Q2: For employees under Scenarios 1 to 4, as the workload of the employees is not full due to remote work, can employers reduce working hours as well as salary by following the Consultation Procedures?

According to the MOHRSS Opinions, for an employer who suffers from difficulties in production and operation due to the impact of the epidemic, in order to stabilise their employees' jobs, employers are

¹ *Opinions on Stabilizing Employment Relationship and Supporting Employer's Resumption of Work and Production During the Period of Epidemic Prevention of the COVID-19* http://www.gov.cn/zhengce/zhengceku/2020-02/08/content_5476137.htm

² *The Circular of Zhejiang Provincial Department of Human Resources and Social Security on Actively Combating the Epidemic Caused by COVID-19 and Handling with the Employment Relation Related Issues* http://www.zjhrss.gov.cn/art/2020/1/28/art_1391002_10431.html

The Circular of Guangdong Provincial Department of Human Resources and Social Security on Actively Coping with the Epidemic of Pneumonia Caused by COVID-19 and Handling with the Employment Relation Related Issues http://hrss.gd.gov.cn/gkmlpt/content/2/2879/post_2879157.html

³ *The Circular of Beijing Municipal Bureau of Human Resources and Social Security on Issues Related to Maintaining the Stability of Employment Relations During Epidemic Prevention and Control* http://rsj.beijing.gov.cn/xxgk/tzgg/202001/t20200123_1621260.html;

advised to undertake the consultation procedures to negotiate with their employees, in order to adjust their salary, rotate shifts, shorten working hours, etc.

In practice, to fulfill the consultation procedures, employers are required to circulate the draft plan to the entire staff, solicit opinions from all employees or their representatives, negotiate with the union or employees' representatives on an equal basis, and announce the finalised plan to all employees (the "Consultation Procedures").

However, as the labour remuneration relates to the most vital interest of employees in the performance of employment contracts, as far as we are concerned, employers may shorten employees' working hours and reduce salary, upon mutual consent achieved through negotiation with the employees.



Q3: For employees in Scenarios 1 and 2, shall the employer reimburse employees' expenses after they have completed the business task, but are stranded at the destination of their business trip?

In situations where the employer has made arrangements for their employees to travel for business purposes, and those employees are left stranded in their respective destinations due to transportation restrictions, we are of the opinion that the reasonable accommodation expenses incurred by employees during the period when they were stranded at the destination of their business trip, shall be reimbursed by employers, in accordance with the company's internal rules and regulations. The reasoning being that, were it not for the fact that the employees were required to travel for work at the behest of their employer, they would not have been stranded in the first place. Moreover, if the employees are further required to work remotely, then employers shall also bear the additional costs expended by the employees in the course of communicating, by telephone or internet, in accordance with the performance of their work.

Q4: For employees in Scenarios 3 and 4, shall the employer reimburse employees' expenses during the period if the employees are required to work remotely?

For employees who are stranded for reasons entirely unrelated to matters of business, but rather due to the cancellation of flights or traffic control measures, the accommodation expenses incurred by

employees during this period shall not warrant reimbursement from their employers. However, if the employees are required to work remotely, we think it is reasonable that employers bear the additional telephone or internet communication costs resulting from the employees' remote work.

Q5: For employees stranded outside China, there is a difference of 6 to 14 hours between their locations and China. How should employers arrange their work?

For employees who are stranded outside of China due to a business trip, family visit or vacation, and based on different time zones where employees are located, it is recommended that the employers distinguish between (1) employees whose local working hours partially overlap with those in China (the "**Partial Overlap Employees**") and (2) employees whose local working hours do not overlap, at all, with those in China (the "**Non-Overlap Employees**").

Based on considerations wherein employees' labour remuneration is not to be reduced and where there is merely a negligible increase in personnel costs borne by the employer, it is our recommendation that employers should negotiate with employees with respect to the following terms:

(1) Adjusting the working hours to ensure that **Partial Overlap Employees** can work with their counterparts in China, at least 4 hours a day and against a correspondingly marked reduction in their salary.

(2) Giving top priority to annual leave, which employees can use for the period that they cannot work concurrently with their counterparts in China.

(3) Employers shall arrange for employees to take rest during periods according to a schedule that is contrary to the rest periods of their counterparts in China. After transportation (by air, rail, etc.) is restored, the employees should be prepared to agree to work on rest days, and for the same length of time in which they rested during working hours over the course of the epidemic, barring the right to claim compensatory time off and ceding the forfeiture of overtime pay for work performed on days of rest. At present, the municipal governments of Shanghai⁴, Beijing⁵ and Shenzhen⁶ have already issued guidance to encourage employers, and employees, to negotiate and make arrangements for rest days throughout the year on a comprehensive basis.

(4) Applying for the comprehensive working hour system. The comprehensive working hour system takes the week, month, quarter or year as the unit period and calculates employees' working hours on a comprehensive basis. For employees under the comprehensive working hour system, within the comprehensive calculation period, their working hours may exceed 8 hours in a day or 40 hours in a week.

To counter the immense impact of the coronavirus epidemic, the local governments in Beijing, Shandong Province, Guangdong Province, Xiamen, Suzhou, Wuxi and other regions have sought to encourage employers to apply to the human resources and social security departments, seeking application of the comprehensive working hour systems based on their business needs. With the comprehensive working hour system in effect, employees may take rest, collectively, during the period of epidemic prevention and may work collectively after the end of the epidemic, which ensures the normal operation and production for employers.

⁴ The Circular of Shanghai Municipal Government to Take Several Measures on Prevention and Control of the Epidemic and Full Support and Service for Employers to Develop in a Steady and Healthy Way.

<http://www.shanghai.gov.cn/nw2/nw2314/nw32419/nw48516/nw48580/nw48612/u21aw1424000.html>

⁵ The Beijing Municipal Government General Office's Several Measures on Further Supporting to Fight Against the Pneumonia Epidemic of COVID-19. http://www.beijing.gov.cn/zhengce/zhengcefagui/202002/t20200203_1622987.html

⁶ Several Measures of Shenzhen Municipality to Support the Enterprises to Overcome Difficulties due to the Pneumonia Epidemic of COVID-19. http://www.sz.gov.cn/cn/xxgk/zfxxgj/tzgg/content/post_6723546.html

(5) For the **Non-Overlap Employees**, employers may also decide to implement the measure for the Suspension of Work. Under the Suspension of Work, employers shall pay employees normal salaries in the first salary payment cycle, and pay employees living expenses equal to a proportion of the minimum wage standard of the place in China where the employees work, if the employees do not provide work after the first salary payment cycle.

Zhong Lun has a team of employment law specialists readily available to assist you with these and other workplace issues. For more information, please visit www.zhonglun.com.