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What Employers Should Do During the Period of Epidemic Prevention of Coronavirus (II)

Employers across China are resuming work successively, but the epidemic is not over. With population flow increasing, local governments in different regions have introduced additional prevention and control measures, such as centralised isolation and home isolation. This article was prepared in a Q&A format and intends to provide employers in China with a reference for the management of employees, before and after the resumption of work.

Q1: For employees who return to the workplace from other provinces, is it a must for them to have centralised or home isolation before returning to work?

In order to avoid large-scale population flow caused by employees returning to their workplaces, which may further aggravate the spread of the epidemic, many local governments have issued policies for centralised isolation or home-based isolation for people coming from other provinces. Such isolation is a measure taken by the government to prevent and control the epidemic in accordance with the *PRC Law on Prevention and Treatment of Infectious Diseases*, the *Regulations on Emergency Response to Public Health Emergencies* and other laws and regulations.

Local policies in different provinces also set different standards to determine whether people coming from other provinces need to be isolated. Beijing and Shanghai share the similar standard, which requires people who leave from Hubei Province or have contact with Hubei Province and the people who have a related epidemiological history (including the history of residence or travelling in key areas such as Hubei Province, and a history of having contact with people in key areas who have fever or respiratory symptoms, or those who are pneumonia patients infected with the new coronavirus) need to be isolated centrally or home-based for 14 days.¹ In Shenzhen, all people coming from the outbreak area need to be isolated centrally or home-based for 14 days.² The most stringent standard is found in Liaoning Province, where all people going to Liaoning from other places need to be isolated at home for 14 days.³

We suggest therefore, that employers in different provinces pay close attention to the isolation standards issued by the local government for people coming from other provinces, and timely identify those employees who need or are under isolation, which may make it easier for employers to be compliant with the prevention and control measures to combat the epidemic, and implement proper employment management procedures after the resumption of work.

Q2: After resumption of work, if employees are still under isolation, should employers pay salary? Can employers ask employees to use paid annual leave or treat the isolation period as unpaid leave

¹ *Whether People Coming Back to Beijing Could Resume Working Immediately? Different Arrangement for Two Types of People*, <http://www.beijing.gov.cn/gongkai/hygg/t1615346.htm>; *Letter of Health Management to People coming to/back to Shanghai*, <http://wsjkw.sh.gov.cn/xwfb/20200204/4921bb5d37734801837360656d015b32.html>.

² *Letter to People Arriving in Shenzhen*, http://www.sz.gov.cn/szst2010/yqfk2020/szxd/content/post_6712746.html.

³ *Liaoning Province 30 Measures to Strictly Inspect and Control the Epidemic in Urban and Rural Communities (Villages) Across the Province—14 Days' Home Isolation for People from Other Province*, http://www.ln.gov.cn/zfxx/jrln/wzxx2018/202002/t20200206_3734857.html.

period?

For employees who are under centralised or home-based isolation due to returning to the workplace from other provinces, we consider such employees should fall within the scope of “the employees who are unable to provide normal work resulting from the government’s implementation of isolation measures or other emergency measures” under Article 1 of the *Circular on Proper Handling of Employment During the Period of Epidemic Prevention of the Novel Coronavirus* by the General Office of the Ministry of Human Resources and Social Security⁴ (the “**MOSSHR Circular**”). According to the MOSSHR Circular, employers shall pay salary to employees for such isolation periods. Many provinces, such as Guangdong, Zhejiang and Shandong have also issued detailed rules according to which employers shall treat employees in isolation as if they had provided normal work during the period, and provide normal salary to such employees⁵. Shanghai also stipulates that employers shall pay salary to employees who are unable to provide normal work caused by isolation measures taken by the government, as if such employees had attended work normally⁶.

As such, if employees cannot provide normal work after the work resumption due to isolation, employers shall pay the salary at normal standards. Also, in view that employees are regarded as having provided normal work during the isolation, employees shall not be treated as taking unpaid leave. In addition, we recommend that employers refrain from asking employees to use paid annual leave for the period during isolation, unilaterally. Employers shall strictly follow the local regulations in regard to asking employees to take annual leave.

Q3: After the work resumption, can employers ask employees isolated at home to work from home? Are employers required to pay overtime compensation?

Regarding local governments that require employees who return to the workplace from other provinces to be isolated at home, we believe the purpose of this measure is to identify patients in incubation periods and contain the spread of the epidemic, rather than increasing the rest days or forcing employers to suspend business. Besides, pursuant to the *Opinions on Stabilizing Employment Relationship and Supporting Employers’ Resumption of Work and Production During the Period of Epidemic Prevention of the Novel Coronavirus*⁷ (the “**MOHRSS Opinions**”) issued by the Ministry of Human Resources and Social Security, All-China Federation of Trade Union and other institutes, it is clear that employers may arrange for employees to work from home, if such employees are affected by the epidemic and are unable to return to work on time. Also, some provinces and cities, such as Shenyang⁸

⁴ The *Circular on Proper Handling of Employment During the Period of Epidemic Prevention of the Novel Coronavirus* by the General Office of the Ministry of Human Resources and Social Security
http://www.mohrss.gov.cn/SYrlzyhshbzb/dongtaixinwen/buneyiaowen/202001/t20200127_357746.html

⁵ The *Circular of Zhejiang Provincial Department of Human Resources and Social Security on Actively Combating the Epidemic Caused by Novel Coronavirus*
http://www.zjhrss.gov.cn/art/2020/1/28/art_1391002_10431.html

The *Circular of the Department of Human Resources and Social Security of Guangdong Province on Actively Responding to the Pneumonia Caused by Novel Coronavirus and Properly Handling the Employment Relationship Related Work*
http://hrss.gd.gov.cn/gkmlpt/content/2/2879/post_2879157.html

The *Circular of Shandong Provincial Department of Human Resources and Social Security on Actively Coping with the Epidemic Situation of Pneumonia Caused by New Coronavirus*
<http://hrss.shandong.gov.cn/articles/ch00330/202001/542c8e3d-d4a1-43a0-893a-d8ec93347864.shtml>

⁶ The *Circular of Bureau of Human Resources and Social Security of Shanghai Municipal on Coping with the Epidemic Situation of Pneumonia Caused by New Coronavirus and Implementing Supportive Measures*
http://rsj.sh.gov.cn/201712333/xwfb/zxdt/01/202001/t20200127_1302966.shtml

⁷ *The Opinions of Ministry of Human Resources and Social Security, All-China Federation of Trade Union, China Employer Confederation/China Employer Directors Association, All-China Federation of Industry and Commerce on Stabilizing Employment Relationship and Supporting Employers’ Resumption of Work and Production During the Period of Epidemic Prevention of the Novel Coronavirus*
http://www.mohrss.gov.cn/gkml/zcfg/gfxwj/202002/t20200207_358328.html

⁸ *Shenyang Human Resources and Social Insurance Bureau Issued the Policy Regarding Employment Affairs for Enterprise to Follow During the Prevention and Control of Epidemic*
<http://www.shenyang.gov.cn/html/SY/15614338564231/154753966969186/15614338564231/3856423148629296.html>

and Beijing⁹, explicitly stipulate that employees should be permitted to work from home and paid their normal salary.

Therefore, we are of the view that, without prejudice to measures for the prevention and control of the epidemic, employers may require the isolated employees to work from home after resumption of work.

Employers do not need to pay overtime if employees work from home during working hours and on working days. However, if employees work overtime on working days, or work during rest days and employers do not provide compensatory time off, then employers should pay overtime compensation to the employees.

Q4: If employees have fever, cough or other symptoms and apply for self-isolation, should the company approve?

If employees have symptoms such as fever and cough and require self-isolation due to public health concerns, the employer may advise such employees to undergo a health examination at a hospital, immediately. After diagnosis, if such fever, cough and other symptoms of the employees are caused by the novel coronavirus, such employees should be treated and isolated by medical institutions. If symptoms such as fever and cough are caused by other diseases, the company may require the employees to go through the sick leave process in accordance with internal sick leave policies.

However, if employees are unwilling to undergo a health examination in a hospital and insist on self-isolation, the employer may require such employees to report their physical status from home. If the employer suspects that the employee(s) could be infected, it should report to the disease prevention and control institutions or medical institutions nearby in a timely manner, according to the *PRC Law on Prevention and Treatment of Infectious Diseases*.

In addition, although the employer has the right to decide whether to approve the self-isolation, under the context of fighting against the epidemic, in the case where it is impossible to arrange for employees to work from home, we recommend that employers consider arranging for employees to use paid annual leaves, paid beneficiary leaves or unpaid leaves on the basis of mutual consent.

Q5: During the epidemic prevention and control period, can employers terminate the employees when their employment contracts expire by the end of the term?

According to the MOHRSS Circular, the employment contract shall be extended beyond expiration in the following cases:

- (1) The employee is a pneumonia patient, suspected patient or is/has been in close contact with the new coronavirus, and his/her employment contract with the employer expires during the period of isolation, medical treatment or medical observation;
- (2) The employee is unable to provide normal work due to isolation measures or other emergency measures taken by the government, and his/her employment contract with the employer expires during the period.

Under scenario (1), the employment contract shall be extended to the expiration of the medical treatment period, medical observation period or isolation period. Under scenario (2), the employment contract shall be extended to the end of the emergency measures taken by the government. For scenarios other than the two noted above, where the employment contract expires

⁹ *The Circular on Further Implementing the Matters Relating to Human Resources and Social Security During the Prevention and Control of Epidemic Issued by Beijing Municipal Human Resource and Social Insurance Bureau*
http://rsj.beijing.gov.cn/xxgk/tzgg/202001/t20200131_1622080.html

during the epidemic prevention and control period, the employer may notify the employee to end the employment contract, except those having statutory causes for establishment of an open-ended employment contract or an extension of the employment term.

At present, many local governments have issued local policies to require employees who return from other provinces to undergo centralised or home isolation for 14 days. In our opinion, if an employee fails to resume work due to centralised or home-based isolation required by the local government and his/her employment contract expires during the isolation period, such circumstances should fall under scenario (2) mentioned above, and his/her employment contract should be extended to the end of the isolation period. In such case, if the employer has no intention to renew the employment contract, the employer may notify the employee that the employment contract will not be renewed by the end of the isolation period, pay normal salary to the employee during the isolation period and settle statutory severance at the end of isolation period.

Q6: If employees fail to resume work on time due to the epidemic, what should employers do?

For those who are not pneumonia patients, suspected patients, or in close contact with the novel coronavirus, and are not under isolation, medical treatment or medical observation periods, but still fail to resume work on time due to the outbreak, employers should distinguish the reasons why such employees have failed to resume their work and treat them differently.

1. For employees who are unable to resume work due to the emergency measures taken by the local governments (such as traffic control or city lockdown, centralised isolation or home isolation) to prevent and control infectious diseases:

As stipulated by the MOHRSS Circular, "for employees who are unable to provide normal work due to the isolation measures or other emergency measures implemented by the government, employers shall pay wages and salary to them during the said period." The departments of human resources and social security of various provinces and cities have promulgated local regulations, which provide that employers should pay normal salary to employees who cannot provide work due to emergency measures taken by the government.

For seriously affected areas (Hubei Province) where the government adopts traffic control or blockades that prevent employees from returning to work, we consider this to be an emergency measure taken by the government to cut off the spread of infectious diseases, and employers should pay salary to the said employees based on normal attendance.

At present, most local governments require employees who return from other cities, especially those from Hubei Province, to be isolated centrally or at home for 14 days. We also consider this to be an "emergency measure" taken by the government, and employers should pay employees normal salary during the said period in accordance with local regulations. Meanwhile, employers can also arrange for employees to work in a flexible way during isolation periods, e.g. home-based work.

2. Employees are required by employers to be isolated at home:

Based on concerns of public health and safety at the workplace, employers may require employees with a high risk of infection (e.g. returning from a key area of the epidemic or with symptoms of fever) to isolate themselves for 14 days. Employers may negotiate with their employees for them to work from home or take annual leaves, but if an agreement cannot be reached, then it is not appropriate to reduce their salary, since it was the employer's decision to prevent the employees from performing their usual work.

3. Employees' self-isolation based on their own concerns:

As the epidemic continues unabated, there could be a risk of infection if work should resume. However, if it is not based on the requirements of the local governments and employees apply for self-isolation based on the uncertainty of infection during their return journey, the employer may decide whether or not to approve it. It is advisable that employers negotiate with employees for an amicable solution, such as arranging for paid annual leaves, beneficiary leaves, or non-paid leaves.

4. Employees unable to resume work in time due to other reasons:

For employees who are unable to return to work on time due to other reasons (e.g. illegal road blockade, etc.), employers may refer to the regulations on “Failure to resume work on time due to the epidemic” released by the governments of different provinces. According to the regulations of Beijing, Henan, Hainan, Guangdong, Zhejiang and Shandong Provinces, upon consultation and mutual consent with employees, employers can give priority to arrange for employees to use paid annual leaves. If the employee has not returned to work for a relatively long time, the employer may arrange for an employee to wait for work, or suspend the employment contract after consulting and achieving mutual consent with the employee.

Q7: What measures can employers take to mitigate the losses caused by the epidemic?

1. Employers may arrange for employees to work from home, if possible. The employers may improve the work efficiency and quality of home-based employees by setting clear work tasks and requiring feedback.
2. According to the MOHRSS Opinions, employers may negotiate with employees to solve employment and salary issues in the following ways
 - For employers whose employees cannot work from home, they may consult with the employees to first use all kinds of leave, such as paid annual leave, employer's own beneficial leave, etc.
 - If an employer suffers from difficulties in production and operation due to the impact of the epidemic, it may undergo consultation procedures with its employees to adjust salary, rotate shifts, shorten working hours, etc. so as to stabilise the employees' jobs.
 - When an employer is temporarily unable to pay salary, it can negotiate with the labour union or employee representatives to postpone the salary payments, so as to help reduce the pressure on cash flow.
3. According to local policies, employers may adopt the following flexible employment methods:
 - Employers in Beijing may comprehensively adjust the use of rest days within the year, provided that the legitimate rights and interests of the employees are secured.¹⁰
 - In Beijing, Shandong, Guangdong, Xiamen, Suzhou, Wuxi and other cities, employers are encouraged to apply for a comprehensive working hour system in accordance with actual needs of production and operation, and to maintain normal production and operation through centralised work and rest.¹¹

¹⁰ Beijing Municipal Human Resources and Social Security Bureau: *Adjusting and Using the Rest Days of the Year Shall be Allowed During the Period of Epidemic Prevention and Control*
<http://www.beijing.gov.cn/fuwu/bmfw/shbz/ggts/t1615905.htm>;

¹¹ The Circular of Beijing Municipal Bureau of Human Resources and Social Security on Issues Related to Maintaining the

- In order to improve the efficiency of approval, the Administrative Examination and Approval Bureau of Beijing Economic-Technological Development Area issued a circular on February 6, 2020. Pursuant to this circular, for the applications of comprehensive working hour system and flexible working hours system, employers registered in the New Town of Yizhuang will experience the trial policy which is known as “approval via the method of notification and commitment”. The Administrative Examination and Approval Bureau will process the applications online, conduct formality review and grant the administrative approval on the same day.¹²

4. Employers may choose to suspend operation and production according to the situation and needs.

Q8: What measures have been adopted by the government so far to help employers to pull through?

With the continuing effects of the epidemic, it is conceivable that many employers will face material loss of income, while the operational costs such as bank loans, rent and salary will continue to become payable on a regular basis. Consequently, employers will have to find a way to survive this crisis, especially during the epidemic period. To effectively ease the burden on employers, the Suzhou government has been the first in the nation to announce ten policies (the “**Suzhou Ten Policies**”)¹³ that support employers in small and medium-sized businesses in their efforts to respond to the outbreak and pull through, from the following three perspectives:

- expanding financial support through specific measures that include ensuring employers’ availability to bank financing and lowering the financing costs;
- stabilising employment through specific measures that include providing employers with unemployment insurance subsidies for post stabilisation and delaying employers’ contributions for social insurance; and
- easing the burdens on employers through specific measures that include reducing and exempting employers’ rentals (applicable where state-owned housing for business use are rented) and exempting, reducing or delaying employers’ tax payments.

The announcement of the Suzhou Ten Policies was publicly praised by the Ministry of Commerce,

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http://rsj.beijing.gov.cn/xxgk/tzgg/202001/t20200123_1621260.html;

The Circular of Shandong Provincial Department of Human Resources and Social Security on Actively Coping with the Epidemic of Pneumonia Caused by New Coronavirus and Handling with the Employment Relation Related Issues

<http://hrss.shandong.gov.cn/articles/ch00330/202001/542c8e3d-d4a1-43a0-893a-d8ec93347864.shtml>

The Circular of Guangdong Provincial Department of Human Resources and Social Security on Actively Coping with the Epidemic of Pneumonia Caused by New Coronavirus and Handling with the Employment Relation Related Issues

http://hrss.gd.gov.cn/gkmlpt/content/2/2879/post_2879157.html

The Circular of Xiamen Municipal Bureau of Human Resources and Social Security on the Issuance of Employment Relations Adjustment and Wage Payment Policy Guidance for Employers During the Prevention and Control of New Pneumonia in Xiamen

http://hrss.xm.gov.cn/xxgk/tzgg/202001/t20200130_2419238.htm

The Circular of Suzhou Municipal Bureau of Human Resources and Social Security on Work Related to Human Resources and Social Security During Epidemic Prevention and Control

<http://www.suzhou.gov.cn/szsrnzf/zwgg/202001/0545968f15134bf1a893661850cedb13.shtml>

The Answers of Wuxi HR Authority on Issues of the Employment Relations, Wages and Welfare During Epidemic Prevention and Control

<http://hrss.wuxi.gov.cn/doc/2020/02/01/2771522.shtml>

¹² The Circular of the Administrative Examination and Approval Bureau of Beijing Economic-Technological Development Area on the Trial Implementation of Approval via the Method of Notification and Commitment for the Applications for the Comprehensive Working Hour System and the Flexible Working Hour System

http://kfqgw.beijing.gov.cn/zwgk/tzgg/202002/t20200206_1625672.html

¹³ Suzhou Government Ten Policy Opinions on Support to Employers in Small and Middle Size to Pull Through as Response to the Pneumonia Epidemic of the Novel Coronavirus

following which, the Shanghai government also released four policies to ease the burden on employers:

- unemployment insurance contributions may be returned to employers, if such employers are qualified and have very small-scale layoffs or none at all;
- the date for adjustment of social insurance contribution basis is delayed for 3 months, from 1 April to 1 July;
- if the necessary documentation has been completed and filed with the social insurance bureau, then employers will be allowed to back contribute to the social insurance within 3 months after the end of the epidemic; and
- if employers (including those in the new industrial formats and the e-commerce sector) organise online training for employees during the suspension of work, such employers will be provided with a subsidy equal to 95% of actual expenses incurred.

Nationwide, in addition to Suzhou and Shanghai, Beijing, Chongqing, Zhejiang, Jiangxi, Guangdong, Shandong, Sichuan, Hainan and Liaoning Province, other provinces have released local policies for easing the burdens on employers during the epidemic period¹⁴. Among these policies, it is worth noting that, in accordance with policies from the Guangdong Government, employers may receive the applicable subsidy for salary and wages paid to employees during the period when employees receive treatment due to the epidemic or are quarantined for medical observation, and the subsidy standard is no more than 50% of the salary base used for employee contributions of pension insurance. We expect that more provinces and cities will consider their own conditions for employers in their specific regions and promulgate local policies to support different kinds of employers, in order to help them to survive this epidemic.

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¹⁴ The Beijing Government General Office Several Measures on Promotion of Healthy Development of Small and Micro Businesses as Response to the Pneumonia Epidemic of Novel Coronavirus
http://www.beijing.gov.cn/zhengce/zhengcefagui/202002/t20200206_1625493.html
The Chongqing Government General Office Twenty Policy Measures on Supporting to Employers in Small and Middle Size to Pull Through as Response to the Pneumonia Epidemic of Novel Coronavirus
http://www.cq.gov.cn/zwgk/fdzdgknr/lzyj/qtgw/202002/t20200204_4786646.html
The Zhejiang Provincial Leading Group for Prevention and Control of the Pneumonia Epidemic of Novel Coronavirus Opinions on Support for Employers in Small and Micro Size to Pull Through
http://www.zj.gov.cn/art/2020/2/6/art_1582435_41883603.html
The Circular of Jiangxi Provincial Government on Twenty Policy Measures to Ensure Stable Economic Development as Effective Response to the Pneumonia Epidemic
http://drc.jiangxi.gov.cn/art/2020/2/5/art_14651_1496115.html
The Circular of Guangdong Provincial Government on Several Measures for Supporting of Employer's Resumption of Work as Response to the Pneumonia Epidemic of Novel Coronavirus
http://www.gd.gov.cn/gdywdt/gdyw/content/post_2886230.html
The Shandong Provincial Government's Several Opinions on Supporting for Stable and Healthy Development of Employers in Small and Middle Size as Response to the Pneumonia Epidemic of Novel Coronavirus
http://www.shandong.gov.cn/art/2020/2/4/art_107861_98285.html
The Sichuan Provincial Government's Policy Measures on Easing the Operational Difficulty of Employers in Small and Middle Size as Respond to the Pneumonia Epidemic of Novel Coronavirus
<http://www.sc.gov.cn/zcwj/xxgk/NewT.aspx?i=20200205213409-989944-00-000>
The Circular of Hainan Provincial Government on Eight Measures about Supporting for Employers in Small and Middle Size to Pull Through as Respond to the Pneumonia Epidemic of Novel Coronavirus
<http://www.hainan.gov.cn/hainan/yqfkzzzzxxx/202002/f0bc090f19b74608b200fa302cbea4bd.shtml>
The Circular of Liaoning Provincial Government on Several Policy Measures about Supporting for Operation of Employers in Small and Middle Size as Response to the Pneumonia Epidemic of Novel Coronavirus
http://www.ln.gov.cn/qmzx/xxgzbd/gzbs/202002/t20200206_3735311.html