CLIENT ALERTS & INSIGHTS

2019-nCoV Outbreak and Related Legal Concerns for Enterprises in China

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As you might already know about the current outbreak of 2019 novel coronavirus (2019-nCoV), starting from the city of Wuhan in Hubei province and spreading all over China and even to an increasing number of countries worldwide, the virus and the related measures taken by the Chinese central and local governments to limit its spread raise a number of challenges for employers with operations in China. The following are summarized issues and suggestions that might be of concern and consideration for your operation in China.

1. **Extended Chinese New Year (CNY) holiday and overtime pay:**
   - The original CNY holiday is from January 24 to January 30. Among these days, January 25, 26, and 27 are public holidays, and the remaining 4 days are deemed as normal rest days.
   - To prevent the cross infection of the virus, on January 27, the Chinese central government announced an extension of the CNY holiday until February 2. Then the majority of provincial-level governments announced a further extension and restriction for general enterprises not to resume work before 24:00 of February 9. Whether such additionally extended CNY holiday by local governments (i.e., local mandatory restricted period) shall be treated as rest days or restricted work days remains unclear in most local governments' announcements, but with several exceptions. For example, Shanghai government clearly announced that the mandatory restricted period should be treated as rest days; but, in Guangdong province and the cities of Suzhou, Wuxi, and Nanjing of Jiangsu province, they should be treated as suspended workdays.
   - According to Chinese law, if an employee works on a public holiday, he/she shall be paid at 300% of his/her normal daily salary rate. If an employee works on a rest day, the employer shall grant him/her a substitute rest day or pay him/her at 200% of his/her normal daily salary rate in lieu of the substitute rest day. However, for employees in Suzhou, Nanjing, and Wuxi, if they work between February 3 and February 7, only normal salaries need to be paid.

2. **Working after the mandatory restricted period:**

- Employers shall provide employees with safe and sanitary working conditions and necessary working protection supplies in accordance with relevant laws and regulstions. That means employers shall ventilate and disinfect the office area, monitor employees' body temperature or physical conditions at the workplace, provide employees with masks and protective gear, and establish internal rules to prevent the virus' spreading. In addition, employers shall also promptly report to the local disease prevention and control institution or medical institution if employers discover any infectious disease patient or suspected patient, and cooperate with the on-site investigation, inspection, and evidence collection of the infectious disease conducted by the local health administrative department.
- Since it might be hard to get such protection supplies (e.g., masks and alcohol wipes are out of stock) and difficult to meet all requirements, working at home is strongly recommended if feasible.
- For employees who are 2019-nCoV pneumonia patients, suspected patients, or have had close contact with such patients or suspected patients and are under required quarantine, they must be fully paid and cannot be terminated for whatever reason during such treatment, observation, or quarantine period, subject to valid medical certificates.
- For employees who are unwilling to resume work after the extended CNY holiday, employers may place them on paid annual leave.
- If an employer believes an employee is a danger to the workplace, the employer can require the employee to stay at home and can consider disciplinary action in accordance with company regulations if the employee refuses a legitimate request to seek medical attention for symptoms.

3. **Collecting and reporting employee personal data:**

- Employers have the rights and obligations to collect and report necessary personal information of employees (e.g., travel history, physical condition, living address, etc.) as authorized by the competent administrative departments of health, medical institutions, epidemic prevention and control institutions, and other authorized agencies.
- The process of collecting and using employee personal information shall comply with relevant regulations on personal information protection:
  - following the principles of lawfulness, justification, and necessity;
  - informing employees about the purpose, method, and scope of information to be collected and used; and
  - obtaining written consent of employees.

4. **Dealing with decreased performance of employees:**

   - The outbreak is likely to impact productivity on employees. If an employee's lower performance is due to the virus outbreak, the employer shall adjust sales target or bonus parameters accordingly.
   - If an employer is considering an extended suspension or shutdown (e.g., no work to do for the employees), the employer still needs to pay the regular salary during the first salary payment cycle (i.e., one month in most cases) of such suspension with advance notice in writing to employees. After the first salary payment cycle, the employer shall pay no less than local minimum wage to employees who have worked, or the subsistence expenses based on local standard (which varies in different localities, but normally is around 70% of local minimum wage) for employees who have not worked.

5. **Breaching of commercial contracts:**

   - Due to disruptions in supply of components from suppliers, reduced productivity, or delayed shipment to customers caused by the virus outbreak, companies may not fulfill their ongoing contracts. You should revisit all your current commercial contracts and promptly notify or discuss with your suppliers or customers in writing about the current and potential contract performance issues.
   - Companies may also seek advice from legal counsel to avoid certain liabilities based on the force majeure clause contained in the contract or the changed circumstances doctrine, if applicable.

6. **New measures and policies by central and certain local governments to fully support enterprises to fight the epidemic, effectively reduce the burden on enterprises, increase financial and taxation support, and help enterprises stabilize jobs:**

   - Requiring state-owned landlord enterprises to reduce or exempt rents for small and medium-sized enterprises affected by the epidemic (e.g., exempting two months' rent in Shanghai, exempting one month's rent and reducing 50% of two months' rent in Suzhou); encouraging non-state-owned landlords to do the same, with possible financial subsidies granted by the governments;
   - Extending enterprise tax filing up to 3 months (e.g., in Shanghai, Beijing, and Suzhou);
   - Refunding 50% of the total unemployment insurance premiums actually paid by both employers and their employees in the previous year to qualified employers who have no layoffs or fewer staff reductions in 2020 (e.g., in Shanghai, Beijing, and Suzhou);
   - Delay in adjusting the social security contribution base until July 1, 2020 (original adjustment date is April 1 of each year), and reducing 0.5% of employer's contribution rate on employee's medical insurance premium (e.g., in Shanghai).

Please note that the above summary was prepared for your reference only and shall not be regarded as a substitute for professional legal advice in individual cases. As the situation with the 2019-nCoV is developing constantly, please contact us or other professional consultants for official advice and further discussion on any relevant topic.

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