



## HR Compliance in China during the Coronavirus Outbreak: FAQs

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Given [Dezan Shira & Associates'](#) prominent position in China – nearly 30 years of experience, thirteen regional offices, several hundred staff on the ground, and our well-known China Briefing platform – we receive numerous daily requests for advisory services across all sectors of business operations in China.

Our prompt and detailed [on-going tracking of the coronavirus situation](#) in China and our previous article on HR issues in China concerning current [HR issues and annual leave entitlements due to the extended Lunar New Year](#) by my colleague Vivian Mao have prompted a deluge of emails seeking clarification on various points.

We condense these into the frequently asked questions below so we may share our knowledge for free to businesses in China at this difficult time.

### Questions for HR related to the coronavirus outbreak

**Q1. If an employee is infected with the novel coronavirus pneumonia, does the company have the right to terminate the labor relationship with the employee?**

According to Article 42 of the PRC Labor Contract Law, "Under any of the following circumstances, the employer shall not terminate a labor contract pursuant to the provisions of Article 40 and Article 41...during the stipulated medical treatment period of an employee suffering from illness or non-work-related injury."

Article 40 clarifies three circumstances where the company is able to terminate the employee who does not commit a breach of internal rules and policies.

Article 41 stipulates details concerning economic redundancy. Therefore, if your employee is infected with the novel coronavirus pneumonia and he/she is either at home or in hospital, by law they are classed as being under medical treatment, and the company is unable to terminate the labor relationship with this employee.

**Q2. If an employee's labor contract has expired during the medical treatment period or quarantine, how do we deal with the labor relationship?**

According to Article 45 of the PRC Labor Contract Law, "where a labor contract has expired under any of the circumstances stipulated in Article 42, the labor contract shall be extended and be terminated upon extinguishment of the corresponding circumstances." This means the labor contract between the employer and employee shall be extended automatically until the medical treatment or quarantine is over.

The Ministry of Human Resources and Social Security of the PRC issued a notification on January 24, 2020 to emphasize that "for patients who are infected with novel coronavirus pneumonia, suspected patients and close contacts during the quarantine or medical observation period and the employees who are unable to provide normal work to enterprises due to the isolation measures and emergency measures taken by the government, enterprises shall pay remuneration to employees during the above mentioned period, and shall not terminate the labor contract with employees on the basis of Article 40 and Article 41 of the PRC Labor Contract Law.

During this period, if the labor contract expires, it shall be extended to the expiration of the medical treatment period, the expiration of the medical observation period, the



expiration of the quarantine or the termination of the emergency measures taken by the government.”

**Q3. What are employee obligations during the medical treatment period/ observation period/quarantine period?**

If the employee has a medical certificate issued by the qualified institution under above mentioned circumstances, the employee shall send the medical certificate to the company for filing. If the employee does not have the medical certificate, he/she shall inform company of their situation in a timely manner.

If this is abused, insist a medical certificate is provided or obtain valid reasons why this is not forthcoming, prior to commencing disciplinary procedures. Common sense applies.

**Q4. Due to the coronavirus outbreak, the company has suspended its business operations. How can the company pay salaries and so on to employees under these circumstances?**

According to Article 12 of Measures for the Payment of Wages by Enterprises in Shanghai Municipality (Revision 2016), “where an enterprise suspends business or operation during a wage payment cycle, it shall pay wages to its workers pursuant to the agreement. Where the suspension exceeds a wage payment cycle, the enterprise may pay wages to its workers based on the new agreement between both parties in accordance with work rendered by the workers, but the wages shall not be less than the minimum wage standard stipulated by the Municipality.”

Some other cities also follow Shanghai’s legislative spirit to pay wages to employees during the business suspension period, such as Xiamen. In other provinces, such as Jiangsu and Guangdong, the same rule is applicable where the suspension happens within a wage payment cycle. However, where the suspension exceeds a wage payment cycle and company is unable to arrange employees to work or employees are unable to provide normal work to company, living expenses shall be paid to employees, which shall not be less than 80 percent of the minimum wage standard.

The local policy in different cities may differ, so please check and follow the local requirements. Your China advisers should be able to assist, if not please contact us at [HR@dezshira.com](mailto:HR@dezshira.com) for clarification.

**Q5. If an employee has traveled to Wuhan or other cities in Hubei recently, is it possible to ask the employee to isolate himself/herself at home for several days before resuming work? How to do that in compliance with the law?**

According to the Law of the People’s Republic of China on Prevention and Treatment of Infectious Diseases (Revision 2013), infectious diseases governed by this Law are divided into Classes A, B, and C.

Based on the latest announcement issued by the National Health Commission of PRC, novel coronavirus pneumonia has been treated as an infectious disease under Class B, but the measures for Class A shall be taken. The medical agencies shall keep the persons in close contact with the patients, pathogen carriers, or suspected patients in medical agencies under medical observation at designated places and to take other necessary preventive measures.

Although there is no specific rule to define whether enterprises are able to request employees to isolate himself/herself at home for a certain period before resuming work, it is recommended for businesses to take the necessary measures to prevent the spread of epidemic in this way.



Companies can follow the recommendations below to ask that employees isolate themselves for a certain period at home before resuming work:

1. Define the scope of work of the employees who need to be isolated at home;
2. We recommend discussing with affected employees about the isolation period, wages, or living expenses during this period, etc.;
3. If agreement is unable to be reached between the company and the employee, the company is able to request the employee to work from home – based on the legislative spirit of relevant laws and the wage shall be paid to employee as if they were in normal attendance; and
4. If the employee refuses to be isolated and work from home, the company may report this to the relevant administrative organization to seek assistance on compulsory isolation.

***Q6. If employees refuse to cooperate with the company during the extended holiday or isolation period, what should the company do?***

Should employees refuse to cooperate with the company, for example, in providing support to clients, it is not suggested to give immediate disciplinary punishment as this can lead to arguments. Some suggestions on handling this have been given in our article [“Managing HR in China during the Coronavirus Outbreak”](#).

Instead, this situation should have been preempted, as every company in China has the autonomy to define its own performance review system. The performance review system should be designed and implemented by the HR department based on the nature of business and the position. Reviews can be conducted monthly, quarterly, and/or annually.

Normally a performance review and related stipulations shall be included in labor contract, employee handbook/bylaws, or specific regulation within the company. Providing that the employees refused to cooperate with company during above mentioned period, the company shall discuss with employees the situation. If both parties are unable to reach an amicable agreement, the employees’ performance may be reviewed according to companies’ internal rules and policies.

Having a Performance Review System should be an integral part of any Foreign-Invested Companies HR policy, and these should be contained within the company Employee Handbook. Please see this article for further advise: [Avoiding Labor Disputes in China: The Importance of the Employee Handbook](#).

If you need assistance with drafting an Employee Handbook, please contact us at [HR@dezshira.com](mailto:HR@dezshira.com).

***Q7. Since the central government announced the Spring Festival Holiday shall be extended and local municipal governments also issued notifications to determine the date of resuming work respectively, if the employee already applied for annual leave during what is now an extended period, how does the company classify this leave?***

Our understanding is that the coronavirus is an unexpected emergency. If the employee had already applied for annual leave prior to the announcement of the holiday extension, we recommend dealing with this situation on the principle of benefiting the employee.

In Shanghai, since the extended holiday shall be treated as weekly rest day, it is preferable to allow the employee to withdraw the annual leave application and enjoy the extended holiday following the local municipal government’s announcement. In Beijing, since the local municipal government encourages the employees to take annual leaves



during this period, it is not necessary to allow the employee to withdraw the annual leave application during this period. The local situation can vary. Please check for regional differences or email us at [HR@dezshira.com](mailto:HR@dezshira.com) for clarification or advise.

**Q8. If my company is registered in Shanghai and it has subsidiaries in other cities, which policy shall be applicable to local employees?**

If the company has employees based in different cities, local employees shall follow their local policies of working place related to extended holiday, time of resuming work, remuneration, etc.

**Q9. If the company needs to resume work before February 10, how does it apply for approval?**

Based on the announcement issued by the Shanghai municipal government on January 28, a special approval and filing system shall be established for early work resumption in Shanghai. If it is necessary to resume operation before February 10 due to specific reasons, the company shall provide relevant materials, including information of foreign employee registrations, an epidemic outbreak response plan and measures, a statement of "Negative Outbreak" to the headquarters of epidemic prevention and controlling of town/street or industry park for approval.

Once approval is issued, the company can resume operations and the approval shall be submitted to headquarters of epidemic prevention and controlling at district level for record. In case of non-compliance the company shall be immediately ordered to stop production and shall be held accountable pursuant to local laws and regulations. This could involve being fined or having the business license revoked.

**Revised Lunar New Year Holiday Schedules:**

- 24 provinces and cities in China have announced a further extension of the current Lunar New Year holiday. These are – Anhui, Chongqing, Fujian, Guangdong, Guangxi, Guizhou, Hebei, Heilongjiang, Henan, Hunan, Inner Mongolia, Jiangsu, Jiangxi, Jilin, Liaoning, Ningxia, Shaanxi, Shandong, Shanghai, Shanxi, Suzhou, Xi'an, Yunnan, and Zhejiang; all have stated that non-essential businesses need not re-commence their operations until **next Monday, February 10**.
- Hubei province, where Wuhan is located and is the center of the Coronavirus outbreak, has stated that the holiday period will last until at least **February 14**.
- Beijing has stated that companies should let employees work from home from now until **February 9**, while Tianjin has urged companies to not resume operations until further notice.
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