

Insights

COVID-19 AND EMPLOYER OBLIGATIONS - PRC UPDATE

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SUMMARY

COVID-19 outbreak has the world on high alert. As governments ramp up efforts to contain the spread of the virus, employers also need to be aware their obligations and take necessary precautionary measures at the workplace to protect the safety and health of their employees. In this article, we discuss some frequently asked questions.

1. What are employers' key legal obligations in respect of the health and safety of their employees?

According to the Work Safety Law of the PRC, business entities must comply with such law and other laws and regulations related to work safety. This covers areas including strengthening work safety management, establishing and improving work safety responsibility systems and enhancing work safety conditions. Accordingly, employees of a business entity shall be entitled to safeguards for work safety according to such law.

It is also a requirement under PRC law that labor contracts signed between business entities and their employees clearly provide for such safeguards for the work safety of employees, the prevention from occupational hazards and the participation in work-related injury insurance for employees. No business entity shall, in any form, enter into agreements with its employees to exempt it from or reduce its legal liability for injuries to or deaths of employees related to accidents at work.

The business entities also need to ensure, among others, the following rights of their employees to be informed of work safety conditions and protocols and to provide feedback:

- right to know the risk factors existing at their work sites and posts, the preventative measures, and the measures to be taken in case of emergency, and be entitled to offer suggestions on work safety of the business entity;

- right to criticize, report, or file an accusation of the business entity's work safety problems, and be entitled to refuse any command against rules or forced operation at risk.

2. Do employers need to have in place guidelines or workplace plans to deal with the COVID-19?

According to the Work Safety Law of the PRC, an employer is required to establish a comprehensive workplace health and safety program and develop a clear "responsibility system". The purpose of the "responsibility system" is to organise and delegate responsibilities relating to workplace health and safety.

Responsibilities are required to be delegated to a "safety unit" established by the employer. This unit should comprise of "leading members of production and business units" and such unit is responsible for:

1. formulating rules and implement a work safety plan;
2. establishing and testing an accident response protocol;
3. ensuring that existing facilities and any new facilities comply with the Work Safety Law; and
4. supervising and inspecting work safety at the respective business and production units.

Therefore, in light of COVID-19, employers should formulate a specific program and a clear "responsibility system" in accordance with the Work Safety Law to ensure the safety of their employees.

3. Are employees who are required to undergo mandatory quarantine or medical observation entitled to salary and other employment-related entitlements?

According to the Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases, employers should continue to arrange for payment of salary to its employees during mandatory quarantine period. In addition, in the Notice concerning Proper Handling of Employment Relations During the Period of Preventing and Controlling of Pneumonia Caused by Novel Coronavirus Infection issued on 24 January 2020 by the Ministry of Human Resources and Social Security (the "**Notice**"), it is expressly set out that during quarantine period or medical observation period, the salary and employment-related entitlements should stay the same as those applicable to ordinary work period. This is further confirmed in the Opinion on Stabilising Labor Relationships and Supporting Enterprises to Resume Operation During the Period of Preventing and Controlling of Pneumonia Caused by Novel Coronavirus Infection jointly issued on 7 February 2020 by the Ministry of Human Resources and Social Security together with, among other associations, the National Labor Union (the "**Opinion**").

For employees who are required to be subject to mandatory quarantine orders for 14 days according to government's notices, employers are recommended to implement work-from-home or paid leave arrangements for such affected employees, in accordance with the ordinary pay scale and entitlement.

4. Are employees who are infected with the COVID-19 entitled to salary and other employment-related entitlements?

For employees who are infected with the COVID-19, according to the Opinion, the salary and other entitlements should remain unchanged during the period of mandatory quarantine, and if after the mandatory quarantine period, the employee still needs to receive medical treatment, salary will be paid in accordance with the relevant rules regarding salary payment during medical treatment period. According to the Provisions on Medical Treatment Period of Sickness or Non-Work Related Injuries of Employees, the length of the medical period will be determined based on the employee's years of service and period of treatment. The amount of salary during the medical period will be subject to the relevant local regulations in this regard in the relevant cities or provinces.

5. Are there any allowances or reliefs from the government that employers can benefit from to deal with shortage of employees affected by quarantine orders?

Yes, the relevant national and provincial governments have issued preferential policies to assist business entities to resume operation. For instance, On 6 February 2020, the Guangdong government issued a notice regarding "Various Policy Measures on Supporting Enterprises to Resume Operation and Production in response to the Pneumonic Plague Caused by the Coronavirus" listing out 20 measures to support the enterprises to resume operation. The Opinion issued on 7 February 2020 also lists out preferential policies to help enterprises resume operation.

6. Can employers screen employees before allowing them to enter the workplace?

The PRC Employment Contract Law allows employers to collect basic information with respect to their employees if they relate to their employment. Screening measures by employers seeking to monitor the situation of infection and to maintain a safe work place will in general be considered permissible.

However, employers should observe PRC data privacy rules when collecting personal data from employees. The rules include, without limitation, that data users are only allowed to collect and process personal data for legitimate, just, and specific purpose and consents must be obtained from subjects before the collection, use or process of such data.

Under the current circumstances, we recommend setting out the purposes when collecting information from employees during screening exercises, including their temperature and travel history. We also recommend that the entire process is monitored by HR personnel. If relevant, how

those information will be used (e.g. submitted to government authorities or for medical purposes) should also be expressly communicated to the employees.

7. Can employers order employees to leave the office or stay home if there is an outbreak?

According to the relevant laws, including the “Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases”, any orders on employees to undergo quarantine or seek medical treatment can only be imposed by government agencies at or above the county level, but not by employers.

If there is an outbreak in the office, the employer shall report the issue to the government authorities in order to take appropriate measures. However, the employer has the right to ask all employees to leave the office if there is an outbreak or suspected outbreak in order to protect the safety of the employees and no consent is required as this is a matter of emergency and in the interest of the employees as a whole.

To add, while a request to work from home can be made in such circumstances, an employer is also prohibited from penalising an employee who is unable to work from home as requested (unless there is a company policy in place requiring so). An employer should also be mindful that requests or restrictions on how an employee should work may result in changing the conditions of an employee's employment without consent.

8. Can employers demand an employee to visit the doctor?

As stated above, if an employer is aware of or suspects that an employee is infected by COVID-19, any orders on employees to undergo quarantine or seek medical treatment can only be imposed by the government agencies at or above the county level, but not by employers. However, it is reasonable for the employer to request the employee to seek medical attention or to stay at home so long as it is in accordance with guidelines issued by the relevant government authorities. An employer may also be obliged to report to the relevant authorities if an employee refuses to seek medical treatment when he/she is reasonably believed to have contracted COVID-19.

9. Can an employee refuse to show up to work for fear of contracting the COVID-19?

According to the Work Safety Law of the PRC, employees of a business entity who are faced with any emergency directly threatening their personal safety shall be entitled to suspend operations or evacuate their sites after taking possible emergency response measures.

Accordingly, we are of the view that employees may only lawfully refuse to enter the workplace if there are justifiable concerns for their health and safety. Short of that, employees are required to comply with their employer's reasonable instructions and failure to do so may amount to a breach

of their labour contract. If employers have taken reasonable steps to provide a safe working environment, employers can demand an employee to show up for work at the office.

However, given the current situation in the PRC caused by COVID-19, employers are encouraged to adopt flexible practices. Employers could request that such employees work from home or take annual leave. If such employees refuse to work from home or take annual leave or do not resume working for a long period of time, employers may negotiate with such employees to arrange for them to be under “on-call” employment status. During “on-call” period, an employer is only required to pay basic living expenses (not the full salary) to such employees, which is equivalent to 70% of the mandatory minimum salary in the city where such employer is based.

RELATED PRACTICE AREAS

- Employment & Labor
- Health & Safety

MEET THE TEAM



Marilyn M. Fish

Atlanta

marilyn.fish@bclplaw.com

[+1 404 572 6632](tel:+14045726632)

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