



# Responding to the Impact of COVID-19 on Labor Relationship in China

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In January 2020, COVID-19<sup>1</sup> broke out in Wuhan City of Hubei Province in China. To cope with the epidemic, the Chinese government had to press the “pause button” on the economy and adopt highly strict epidemic prevention and control measures, including some restrictive policies such as closing the cities, transportation, communities, and forced home isolation. Many provinces stipulated that enterprises must not resume production before a specific date. It caused tremendous operational pressure on enterprises, especially for small and medium-sized enterprises. Workers also should comply with local isolation policies at home. Besides, the outbreak coincided with the traditional Chinese New Year, and migrant workers returned to their hometowns on a large scale. Affected by the traffic closure policy between cities, many migrant workers are unable to return to work on time.

In this context, labor law issues in the background of the COVID-19 outbreak have arisen. Since January 2020, the Chinese government has promulgated several regulatory documents to balance the conflict between protecting labor rights and easing the crisis of the enterprises during the epidemic. This article briefly introduces the relevant regulation related to the labor relations issues during major public health events, including the recent policies enacted by the Chinese government.

## 1. Permanent or Temporary Measures on COVID-19

Seventeen years ago, the SARS epidemic broke out in China, which prompted the Chinese government to speed up the process of legislation on public emergencies. The Chinese government implemented the *Prevention and Treatment of Infectious Diseases Law* in 2004, which stipulated the management and response system for public health emergencies. The *Emergency Response Law*<sup>2</sup> in 2007 stipulated the responsibilities of the government and other social subjects in coping with major public emergencies, including natural disasters, accident disasters, public health events, and social security events. However, the two legislations barely mention the issue of labor relations, and only the *Prevention and Treatment of Infectious Diseases Law*<sup>3</sup> stipulated the wage issue during the workers in the isolation period.

After the outbreak of COVID-19 in January 2020, China’s Ministry of Human Resources and Social Security and other departments quickly issued relevant regulations and policies to address

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<sup>1</sup> In China, the government also call the COVID-19 as New Coronavirus Pneumonia.

<sup>2</sup>《中华人民共和国突发事件应对法》11/01/2007. Available at: [http://www.gov.cn/ziliao/flfg/2007-08/30/content\\_732593.htm](http://www.gov.cn/ziliao/flfg/2007-08/30/content_732593.htm)

<sup>3</sup>《中华人民共和国传染病防治法》12/01/2004 (revised on 06/29/2013). Available at: <http://www.npc.gov.cn/npc/c238/202001/099a493d03774811b058f0f0ece38078.shtml>

issues such as wages, termination protection, and social insurance during the epidemic. The main regulations are listed in the following Chart:

Issued Date	Temporary Measures
01/23.2020	<p><b>Notification about Protection issues on Medical Staff Who Have Contracted New Coronavirus Pneumonia Due to Performing Work Duties and Related Staff Members, issued by Ministry of Human Resources and Social Security, Ministry of Finance, National Health and Health Commission</b></p> <p>《关于因履行工作职责感染新型冠状病毒肺炎的医护及相关工作人员有关保障问题的通知》(人社部函〔2020〕11号)</p> <p>Available at: <a href="http://www.mohrss.gov.cn/gkml/zcfg/gfxwj/202001/t20200123_357525.html">http://www.mohrss.gov.cn/gkml/zcfg/gfxwj/202001/t20200123_357525.html</a></p>
01/24/2020	<p><b>Notice on Properly Handling Labor Relations During the Prevention and Control of New Coronavirus Pneumonia, issued by Office of the Ministry of Human Resources and Social Security</b></p> <p>《关于妥善处理新型冠状病毒感染的肺炎疫情防控期间劳动关系问题的通知》(人社厅明电〔2020〕5号)</p> <p>Available at: <a href="http://www.mohrss.gov.cn/SYrlzyhshbzb/dongtaixinwen/buneiyaowen/202001/t20200127_357746.html">http://www.mohrss.gov.cn/SYrlzyhshbzb/dongtaixinwen/buneiyaowen/202001/t20200127_357746.html</a></p>
01/26/2020	<p><b>Notice on Extending the Spring Festival Holiday in 2020, issued by General Office of the State Council</b></p> <p>《关于延长2020年春节假期的通知》(国办发明电〔2020〕1号)</p> <p>Available at: <a href="http://www.gov.cn/zhengce/content/2020-01/27/content_5472352.htm">http://www.gov.cn/zhengce/content/2020-01/27/content_5472352.htm</a></p>
02/07/2020	<p><b>Opinions on Stabilizing Labor Relations during the Prevention and Control of New Coronavirus Pneumonia and Supporting Enterprise to Work Resumption, issued by Ministry of Human Resources and Social Security, ACFTU (All-China Federation of Trade Unions), All-China Federation of Industry and Commerce, CEC (China Enterprise Confederation), China Entrepreneur Association</b></p> <p>《关于做好新型冠状病毒感染肺炎疫情防控期间稳定劳动关系支持企业复工复产的意见》(人社部发〔2020〕8号)</p> <p>Available at: <a href="http://www.mohrss.gov.cn/gkml/zcfg/gfxwj/202002/t20200207_358328.html">http://www.mohrss.gov.cn/gkml/zcfg/gfxwj/202002/t20200207_358328.html</a></p>
02/29/2020	<p><b>Notice about Phased Reduction and Exemption on Enterprise Contribution of Social Insurance, issued by the Ministry of Human Resources and Social Security, the Ministry of Finance and the State Taxation Administration</b></p> <p>《关于阶段性减免企业社会保险费的通知》(人社部发〔2020〕11号)</p> <p>Available at: <a href="http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/202002/t20200224_3473183.htm">http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/202002/t20200224_3473183.htm</a></p>
03/20/2020	<p><b>Implementation Opinion about Tackling the Impact of the New Coronavirus Pneumonia and Strengthening Employment Stabilization Measures</b>《关于应对新冠肺炎疫情影响强化稳就业举措的实施意见》(国办发〔2020〕6号)</p> <p>Available at: <a href="http://www.gov.cn/zhengce/content/2020-03/20/content_5493574.htm">http://www.gov.cn/zhengce/content/2020-03/20/content_5493574.htm</a></p>

The norms mentioned above are mainly made in the form of notices and opinions, which are with the characteristic of policy guidance. The local government would implement them following the current legislation. Considering the economic pressure caused by COVID-19, the government

suggested that the enterprises and trade union or employee representatives should negotiate on some interest issues. The government also adopts some subsidy policies to alleviate the business pressure of the enterprise and employment pressure.

## **2. General Regulations Affecting Labor Rights**

According to the provisions of the current legislation, when a public health emergency occurs, the government has the right to take control measures on society and the economy, which would affect the operation of enterprises. Therefore, the workers may have to stop work temporarily or work overtime to meet public needs.

First, enterprises should abide by the government's policies on epidemic prevention and control and adjust their production. When a natural disaster, accident, or public health emergency occurs, the government may prohibit or restrict the use of related equipment and facilities, close or restrict the use of relevant sites, suspend the densely populated activities or business activities that may increase risk, or other measures<sup>4</sup>.

Second, the government can require related enterprises to continue operations to serve the prevention and control of the epidemic. The government may require enterprises that produce and supply daily necessities and emergency relief supplies to organize production and ensure supply. The organizations that provide public services such as medical care and transportation should provide corresponding Services at the requirement of the government<sup>5</sup>. In this circumstance, the working hours of the workers are not subject to the overtime restrictions by the labor law.

## **3. Teleworking**

There are no clauses about telework in current Chinese legislation, but this form of employment already exists in practice with the development of internet technology. During the COVID-19 epidemic, telework has become a government-recommended work model to avoid the spread of the epidemic. The enterprises may arrange employees to work at home to complete work tasks through flexible working methods such as telephone and Internet when conditions permit<sup>6</sup>. For example, the online class has become the primary teaching method in universities affected by the epidemic.

## **4. Working Conditions**

### **4.1. Wage Issues**

For the following workers, the enterprise should pay their wage during this period, including (1) confirmed patients, suspected patients, and close contacts during isolation treatment or medical observation (2) the workers who cannot provide regular work due to isolation measures implemented by the government, or other emergency Measures. For the two kinds of workers, the enterprise shall treat them as providing normal labor and pay wages based on regular working hours<sup>7</sup>.

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<sup>4</sup> Article 49 of Emergency Response Law.

<sup>5</sup> Article 52 of Emergency Response Law.

<sup>6</sup> Article 2(1) of Opinions on Stabilizing Labor Relations during the Prevention and Control of New Coronavirus Pneumonia and Supporting Enterprise to Work Resumption.

<sup>7</sup> Article 1, Notice on Properly Handling Labor Relations During the Prevention and Control of New Coronavirus Pneumonia.

During the period of delayed work resumption due to the epidemic, if a worker fails to provide labor after exhausting the leaving holiday, the enterprise may negotiate with the employee by the regulation concerning wage payment during the period of work and production suspension. In the first wage payment cycle, the employer pays wages according to the standards stipulated in the labor contract. From the second wage payment cycle, the employer would pay living expenses according to relevant regulations. For example, in Jiangsu Province, in the second wage payment cycle of work and production suspension, if the employer has not arranged work, the living expenses of the worker shall be paid at 80% of the local minimum wage<sup>8</sup>.

#### **4.2. Dismissal Protection**

For the following workers, the enterprise shall not dismiss them according to the article 40 and article 41 of *Labor Contract Law*<sup>9</sup>, including (1) confirmed patients, suspected patients, and close contacts during isolation treatment or medical observation; (2) the workers who cannot provide regular work due to isolation measures implemented by the government, or other emergency Measures. During this period, if the labor contract expires, it will be postponed to the end of the employee's medical period, the medical observation period, the quarantine period, or the government's emergency measures<sup>10</sup>.

The government suggested that when the operation difficulties occurred due to the epidemic, enterprises can negotiate with employees to adjust wages, rotate shifts, shorten working hours for stabilizing jobs, and not laying off employees<sup>11</sup>.

#### **4.3. Holiday**

1. Extend the Spring Festival holiday. The State Council extended the Spring Festival holiday in 2020 to February 2 (3 days more than regular Spring Festival holiday)<sup>12</sup>. If the Employees cannot take time off in the extended holiday (from Jan.31 to Feb.2) due to the need for epidemic prevention and control, the employers shall arrange alternative leave, or they should pay the employees 200% percent of basic salary.

2. Preferential use of other holidays. If the employees cannot return to work position on time or the employers cannot start production and use telework, the employers can negotiate with the employees that using the annual leave and the company's welfare holidays in advance<sup>13</sup>.

### **5. Labor Contract and Business Crisis**

If the objective conditions taken as the basis for the conclusion of the contract have considerably changed, the original labor contract cannot be performed. When the employer and the employee cannot reach an agreement on modification of labor contract, the employer may terminate the labor contract by notifying the employee in writing form 30 days in advance or after paying him an extra

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<sup>8</sup> Article 31 of Wage Payment Regulation of Jiangsu Province.

<sup>9</sup>《中华人民共和国劳动合同法》01/01/2008 (revised on 12/28/2012)

Available at: [http://www.mohrss.gov.cn/SYRlzyhshbzb/zcfg/flfg/fl/201605/t20160509\\_239643.html](http://www.mohrss.gov.cn/SYRlzyhshbzb/zcfg/flfg/fl/201605/t20160509_239643.html)

<sup>10</sup> Article 1, Notice on Properly Handling Labor Relations During the Prevention and Control of New Coronavirus Pneumonia.

<sup>11</sup> Article 2, Notice on Properly Handling Labor Relations During the Prevention and Control of New Coronavirus Pneumonia.

<sup>12</sup> Notice on Extending the Spring Festival Holiday in 2020.

<sup>13</sup> Article 2(1) of Opinions on Stabilizing Labor Relations during the Prevention and Control of New Coronavirus Pneumonia and Supporting Enterprise to Work Resumption.

one-month salary<sup>14</sup>. Therefore, if the enterprise is severely affected by the COVID-19, which causes production difficulties or other circumstances considerably affecting the performance of the labor contract, it can terminate the labor contract with the employee according to the above provision. However, the government advised that negotiation on revising labor contract in preference to termination of the contract<sup>15</sup>.

The Spokesperson of the Standing Committee of the National People's Congress stated that when the COVID-19 happened, the government has adopted corresponding prevention and control measures. For the parties who are unable to perform the contract, it is an unforeseeable, unavoidable and insurmountable force majeure<sup>16</sup>. In some provinces, the local regulations also stipulated the rule of suspension of labor contract. For example, in Jiangsu Province, if the labor contract cannot be performed due to force majeure, the labor contract could be suspended. During the period of suspension, the labor relationship is retained, and the performance of the labor contract is suspended. The employer may not pay wages and stop paying social insurance contributions<sup>17</sup>.

## **6. The Collective Labor Law**

The adjustment of labor relations in China mainly depends on individual labor laws, not collective labor laws. However, when the COVID-19 outbreaks, the government suggested that the employer and trade union or employee representative should reach agreement on some rights and interests through collective negotiation, for resolving the epidemic crisis together. Also, the collective labor contracts may be revised or terminated if it is impossible or partially impossible to perform due to force majeure and other reasons. Therefore, when the epidemic situation causes the above condition, the collective contract can also be revised or terminated by law<sup>18</sup>.

## **7. Social Insurance Issue**

During the epidemic, the Chinese government adopted methods such as reducing or exempting social insurance contributions and strengthening unemployment insurance subsidies to ease business difficulties and stabilize employment.

### **7.1. Exempt or Reduce the Employer Contribution of Social Insurance in The Certain Period**

From February 2020, all provinces (excluding Hubei Province) may exempt medium, small, and micro-enterprises from the employer contribution of the three kinds of social insurance, including pension, unemployment, work-related injury, in light of the impact of epidemic and fund bearing capacity. The exemption period shall not exceed five months. For the large-sized enterprises and other insurance participating entities, they may pay half of the employer contribution of the above three kinds of social insurance, and the period of Reduction shall not exceed three months.

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<sup>14</sup> Article 40 of Labor Contract Law.

<sup>15</sup> Article 3(5) of Opinions on Stabilizing Labor Relations during the Prevention and Control of New Coronavirus Pneumonia and Supporting Enterprise to Work Resumption.

<sup>16</sup> 企业因疫情不能正常履行合同怎么办? Available at:

<http://www.npc.gov.cn/npc/c30834/202002/b9a56ce780f44c3b9f6da28a4373d6c3.shtml>.

<sup>17</sup> Article 30 (3) of Labor Contract Regulation of Jiangsu Province.

<sup>18</sup> Article 40(2) of Regulations on Collective Contracts.

From February 2020, Hubei Province may exempt insurance participating entities (excluding the *government departments and public institutions*) from the employer contribution of the above three kinds of social insurance. The exemption period shall not exceed five months.

For the Enterprises with severe difficulties in production and operation affected by the epidemic, may apply for the deferred contribution of social insurance. The deferred period shall not exceed six months in principle, and no overdue fine will be charged<sup>19</sup>.

## **7.2. Actively Play the Role of Unemployment Insurance**

Strengthen subsidies for the unemployed. The government guarantees that the basic living of the unemployed and the unemployment insurance benefits can be applied online before the end of April. For those unemployed who have not been employed at the expiration of the unemployment insurance period, and those who do not meet the conditions for receiving unemployment insurance benefits will receive a 6-month unemployment financial aid<sup>20</sup>.

Strengthen the return of unemployment insurance to enterprises to alleviate business difficulties and stabilize employment. For example, according to the “Public Policies and Measures to Promote Economic and Social Development in Hubei Province” issued in March, 2020, if the layoff rate of an enterprise is not higher than 5.5%, 70% of the paid unemployment insurance contribution in the previous year will be returned. The enterprise can directly return 50% of the paid unemployment insurance contribution in the last year. For the small and medium-sized enterprises affected by the COVID-19 and insist on not layoffs and paying wages regularly, the social insurance subsidies of them will continue to be extended for six months after work and production resumption.

## **8. Safety and Health at Work**

On the one hand, employers should provide employees with a safe and healthy workplace environment. On the other hand, employers are obliged to prevent the spread of the epidemic in the workplace. Otherwise, they should bear the corresponding civil, administrative, or criminal liability responsibility. The law also requires that the medical establishment should strictly implement the managerial and operating norms to prevent iatrogenic and nosocomial infections<sup>21</sup>.

In Jan.20 of 2020, National Health Commission declared that the COVID-19 was included in the Class B infectious diseases specified in the Law of the People’s Republic of China on the Prevention and Control of Infectious Diseases, and measures for the prevention and control of class A infectious diseases should be adopted<sup>22</sup>.

After the outbreak of the COVID-19, the government issued relevant regulations for the prevention and control of epidemics in public places, including the operation and management specifications of air conditioning and ventilation systems, technical guidelines on the selection and use of virus masks for different groups of people, guidelines for public health prevention and control, and related regulations for the operation in catering enterprises.

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<sup>19</sup> Notice about Phased Reduction and Exemption on Enterprise Contribution of Social Insurance.

<sup>20</sup> Implementation Opinion about Tackling the Impact of the New Coronavirus Pneumonia and Strengthening Employment Stabilization Measures.

<sup>21</sup> Article 21 of Prevention and Treatment of Infectious Diseases Law.

<sup>22</sup> Available at:

<http://www.scio.gov.cn/xwfbh/xwfbh/wqfbh/42311/42478/xgzc42484/Document/1672496/1672496.htm>



On January 22, the General Office of the National Health and Health Commission issued the Technical Guidelines for the Prevention and Control of New Coronavirus Infection in Medical Institutions (First Edition). It regulated the issues about training medical staff, health protection of health care staff, infection monitoring, cleaning and disinfection management, workflows standards. If the medical care and related staff, who have infected the COVID-19 or died due to COVID-19 while performing their duties, shall be regarded as work-related injuries and can access to the work-related injury insurance benefits<sup>23</sup>.

Effective Date	Law and Regulation
11/01/2007	<b>Emergency Response Law</b> 《中华人民共和国突发事件应对法》 Available at: <a href="http://www.gov.cn/ziliao/flfg/2007-08/30/content_732593.htm">http://www.gov.cn/ziliao/flfg/2007-08/30/content_732593.htm</a>
12/01/2004(revised on 06/29/2013)	<b>Prevention and Treatment of Infectious Diseases Law</b> 《中华人民共和国传染病防治法》 Available at: <a href="http://www.npc.gov.cn/npc/c238/202001/099a493d03774811b058f0f0ece38078.shtml">http://www.npc.gov.cn/npc/c238/202001/099a493d03774811b058f0f0ece38078.shtml</a>
01/01/1995	<b>Labor Law</b> 《中华人民共和国劳动法》 Available at: <a href="http://www.gov.cn/banshi/2005-05/25/content_905.htm">http://www.gov.cn/banshi/2005-05/25/content_905.htm</a>
01/01/2008 (revised on 12/28/2012)	<b>Labor Contract Law</b> 《中华人民共和国劳动合同法》 Available at: <a href="http://www.mohrss.gov.cn/SYrlzyhshbzb/zcfg/flfg/fl/201605/t20160509_239643.html">http://www.mohrss.gov.cn/SYrlzyhshbzb/zcfg/flfg/fl/201605/t20160509_239643.html</a>
02/29/2020	<b>Interim Regulation on Wage Payment</b> 《工资支付暂行规定》 Available at: <a href="http://www.mohrss.gov.cn/SYrlzyhshbzb/zcfg/flfg/gz/201705/t20170522_271150.html">http://www.mohrss.gov.cn/SYrlzyhshbzb/zcfg/flfg/gz/201705/t20170522_271150.html</a>

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<sup>23</sup> Notification about Protection issues on Medical Staff Who Have Contracted New Coronavirus Pneumonia Due to Performing Work Duties and Related Staff Members