

Key Things Employers in China Should Know Regarding Reopening Amid COVID-19 (I)

by Ray Liu Esq.

Due to the outbreak and rapid evolvement of the novel coronavirus (COVID-19), the central government and its local counterparts in China have taken a series of actions to contain the spread of the virus, including extending the Spring Festival Holiday, ordering enterprises to put off the schedule of business reopening and encouraging employees to work from home. Now, with the growth of virus infection gradually slowing down, local governments in various locations (including Beijing, Shanghai and Guangdong) have allowed and even encouraged business entities to resume their operations. At the time of this article, a large number of companies and factories have already reopened their businesses with more to follow in the coming weeks.

With massive employees swarming into offices and factories, employers in China now face significant challenges in preventing and controlling the spread of coronavirus at workplace. Several workplace infection cases have been reported recently, under which employers had to suspend their business operations and invest additional funds and resources to cooperate with the disease prevention and control requests from the government.¹ Dorsey and Whitney LLP will release a series of articles to help employers in China, including multinational organizations' Chinese operations, navigate the complex policies and requirements regarding business reopening implemented by the government and provide a practical guide on how to effectively prevent and deal with workplace infections.

As the first episode of the series, this article focuses on the timing and filing requirements for business reopening, actions to be taken to prevent and control spread of virus at workplace, measures required to protect personal information collected during the virus fight, and steps to be taken in the event of suspected infections at workplace.

1. When could companies resume their operations in China?

It depends on the location and business nature of the company. In Beijing, Shanghai and Guangdong, most types of business operators are now allowed to resume their

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operations. However, in certain places hit hard by the epidemic, the local governments may have different timetables for business reopening. For example, in Hubei province (where the first infection case in China was identified), after rounds of re-scheduling, the reopening date for most companies (except certain businesses crucial for disease control and people's daily needs) is currently set on March 10, 2020, which might be further extended depending on the circumstances.² Also, governments at various locations have released their own versions of negative list enumerating businesses with high infection risks that are not allowed to reopen. Among others, movie theatres, Karaoke theatres, indoor training institutes, bars, Spa centers, museums and galleries are regarded by many local governments as high-risk businesses and therefore required to suspend their operations for an extended or indefinite period.⁴

2. Do companies need to make a filing with the government in order to reopen business?

In order to mitigate the risks of workplace virus transmission, many local governments require companies to make filings before or at the time of business reopening. For example, in the Chaoyang District of Beijing where many multinational companies are located, the Office Building Epidemic Prevention and Control Working Group formed by the local government issued a notice according to which business entities within Chaoyang District should cooperate with the local authorities to provide necessary information via an official website (<http://lyfy.bjchy.gov.cn>) designated by the government.⁵ In Shanghai, companies in Jing'an District, one of the busiest central business districts in Shanghai, must complete an online filing when reopening their business.⁶ Other places such as Hangzhou, Chengdu, Suzhou Industrial Zone, Ningbo and Shenzhen also require companies to conduct reopening filing in their required methods and formats.⁷ Notably, to encourage companies to restart their operations or productions, governments in many places have cancelled the pre-approval requirement for reopening, which means that business operators can resume their operations first and proceed with the required filing upon or after reopening.⁸ Companies planning to resume their operations should carefully check if reopening filing is required at its location and complete any applicable filing procedures to ensure compliance.

3. What actions should an employer take to prevent and control virus spread at workplace?

Under the Employment Contract Law ("ECL") and the Labor Law of the People's Republic of China ("PRC"), an employer is obliged to provide a safe working environment to its employees.⁹ Under the Law of the PRC on Prevention and Control of Contagious Disease ("Contagious Disease Prevention Law"), an employer must timely report any confirmed or suspected infection of contagious disease to the medical institutions or disease prevention and control organizations ("DPC Organizations") and cooperate with their requests in preventing and curbing the spread of the contagious disease.¹⁰ Based on these national laws, a number of local governments have released detailed guidelines regarding the precautions an employer should take to prevent and control workplace virus infection. While the requirements in different places may vary and an employer

usually only needs to comply with the rules at its own location, it is advisable for employers to take the following actions, which have been recommended or mandated by governments in various locations.

- Obtain guidance from the local government regarding virus prevention and control in advance. Many places have released systematic guidelines to business operators with requirements and tips for virus prevention and control at workplace.¹¹ It is important for employers to carefully review such guidelines from the local government beforehand and ensure compliance with the requirements thereunder. Where the local government has not published any systematic guidelines, the employer should consult with the local authorities and obtain certain basic information regarding business reopening and virus control (including what procedures need to be completed for reopening and which institution or department it should contact when there is an emergency) in advance.
- Form an anti-virus working group (or at least designate several responsible persons). Employers should form a working group or at least designate several responsible persons to handle relevant disease control and prevention matters. It is advisable to include HR specialists and mid-level managers into the working group, because these staff usually have the most interactions with lower-level employees and may be the first person employees will reach out to where there is an emergency.
- Formulate plans and policies for workplace disease prevention and control. Detailed rules and regulations for disease prevention and control should be prepared in advance. It is important for employees to comply with such policies because any virus infection resulting from non-compliance may cause unmeasurable losses to a company, and disciplinary rules should be included into these policies to provide basis for companies to take HR actions against an employee who violates relevant anti-virus policies. Given the urgency and importance of the anti-virus measures, employers may consider using simplified methods to satisfy the consultation and announcement requirements for policy-making under the ECL¹², for example, by sending the policies (or their web links) to and seeking comments from employees via email or online working applications.
- Collect travel information from employees and comply with the local requirements for medical observation. In almost all large cities and industrial zones (including Beijing, Shanghai, Guangzhou, Hangzhou and Suzhou Industrial Zone), employers are required to collect travel information of their employees and arrange for those who return to work from other locations (especially places hit hard by COVID-19 such as Hubei Province or Wenzhou City in Zhejiang Province) to first accept medical observation for a designated period of time (typically 14 days).¹³ To ensure compliance, companies should identify the scope of employees for which medical observation is required under local rules and have them complete the medical observation before they may return to work.
- Have necessary supplies for disease prevention and control in place. While there is no law expressly requiring employers to provide face masks to every employee during the virus fight, an official from the National Development and Reform Commission stated during a media conference that enterprises must equip their employees with face masks and have sanitizers and electrical thermometers in place.¹⁴ Therefore, we recommend that employers procure sufficient face masks, sanitizers, thermometers and other supplies for disease prevention and control before resuming operations to avoid potential non-compliance risks.
- Educate employees on the precautions to be taken. Employers should ensure that their employees are aware of the requirements and recommended practices for virus prevention and control at workplace (such as wearing face masks and frequently washing their hands), which can be done through appropriate training and publicity.

Please note, however, to minimize the risks of workplace virus spread, companies should avoid in-person trainings involving large numbers of employees. Instead, trainings may be conducted via pre-recorded videos, online courses or telephone conference.

- Closely monitor health conditions of employees and visitors. Companies should establish a temperature monitoring mechanism. For example, employees should measure their body temperatures on a regular basis, and every visitor should be required to measure their temperature before they may be permitted to enter the working area. Also, companies should require employees to immediately report any health issues to their anti-virus working group or the designated responsible persons.
- Appropriately ventilate, clean and sanitize the working space and dormitories on a regular basis. Companies should review and adjust their cleaning practices as necessary by following the advice from the local government and disease prevention professionals. For example, knobs on doors and elevator buttons should be cleaned and sanitized on a regular basis. Also, certain chemicals (such as ethanol) used for disinfection should be handled with care to minimize fire hazards. The cleaners should be trained so that they can properly carry out the cleaning and sanitizing duties at this special moment.
- Reduce employees' in-person interaction with colleagues and business partners to the extent possible. At this special time, less in-person contact would mean less exposure to virus transmission. Therefore, enterprises are encouraged to reduce employees' in-person interaction with colleagues, vendors and customers to the extent possible. For example, for those whose work can be performed at home, employers may consider implementing a work-from-home policy. Employees should be encouraged to have meetings and work-related discussions via telephones or working applications. Business travels should be avoided to the extent possible. In certain places, companies with large crowds of employees are required to limit the staff number at workplace and ensure the working space per person is not smaller than the threshold designated by the government (for example, no less than 2.5 m² per person in office buildings in Beijing).¹⁵ Companies should take appropriate measures to comply with such requirements (if applicable), for example, by having employees come to office in shifts.
- Immediately report any confirmed or suspected infection and provide other necessary information to medical institutions or DPC Organizations. This is an obligation expressly provided under the Contagious Disease Prevention Law and the failure of which may result in serious legal liabilities. Companies should make the reporting obligation and the legal consequences of non-compliance adequately clear to their employees, and ensure that such requirement is strictly followed.

The above-listed measures are not exhaustive and the requirements may vary from place to place. Employers should carefully review the applicable local rules and comply with the requirements thereunder. Also, employers are recommended to keep a close eye on the evolvement of the COVID-19 situation and adjust its practices based on any updated policies and orders from the government.

4. What measures should be taken by companies to protect personal information collected during the virus fight?

Although PRC law is silent on whether employers may collect personal information from their employees without prior consent for the purposes of disease prevention and control, a national standard on protection of personal information effective on May 1, 2018 regards the collection of personal information for the purposes of “public health” as an

exception to the “prior consent” requirement¹⁶ and it is widely accepted among legal practitioners in China that employers may collect necessary personal information from employees without their prior consent to contain virus transmission. However, this does not mean employers may freely handle employees’ personal information amid the COVID-19 outbreak. Among others, employers should take the following steps to protect the privacy and safety of the personal data collected for the purposes of virus prevention and control to ensure compliance:

- Employees should be informed about the scope and types of information to be collected, and the purposes for collecting and using such information.
- Employers should limit the scope of information collected to the minimum extent necessary. This means that companies should only collect the information necessary to respond to any reasonable requests from the local governments (such as employees’ travel history before returning to work, body temperature, residence and contact information, and information regarding whether they have any health issues and relevant symptoms, whether they had any contact with confirmed or suspected COVID-19 patients and whether they have completed the required medical observation). Any collection of information beyond the necessary extent must be notified to and expressly consented by employees in advance.
- Employers should take necessary measures to protect the security of the information collected, for example, to encrypt the documents containing personal data or have the documents (if in physical copies) locked in a safe storage compartment, to limit access to the personal data on a need-to-know basis, to have any e-data stored in a working system of a high security level.
- Unless permitted by laws or regulations (e.g., where disclosure to government authorities or DPC Organizations are required), employers in China should not disclose or transfer any personal information collected during the virus fight to any third party without the employees’ express consent. For multinational organizations, unless there is a compelling reason for transferring employees’ personal data collected for anti-virus purposes overseas (e.g., where the infected employees might have carried the virus abroad), the headquarters may simply ask the China branch to provide general updates regarding the COVID-19 situation in China on a regular basis with limited or no personal information to keep apprised of any development in China while mitigating the compliance risks for cross-border data transfer.

5. What steps should be taken when suspected infections at workplace are reported?

Among others, the employer should take the following steps under such circumstances:

- Direct the employee with suspected infection (the “Suspected Patient”) to accept medical advice and treatment from a professional medical institution;
- Immediately report the situation to the local government authorities or relevant DPC Organization to seek their guidance regarding how to deal with this situation;
- Cooperate with the local government authorities or the DPC Organization and take necessary measures to contain the spread of virus, for example, by:
 - identifying employees, vendors or customers who had close contact with the Suspected Patient;
 - cooperating with any quarantine or medical observations required by the local authorities;
 - sanitizing and disinfecting the working areas and staff dormitories (if any) based

on the requests and instructions from the local authorities;

- Consult with the local government authorities to determine whether the employer needs to suspend its operations;
- Cooperate with any other requests from the local government authorities regarding disease prevention and control.

¹ See <http://finance.sina.com.cn/stock/relnews/cn/2020-02-19/doc-iimxxstf2789161.shtml>; also see https://www.sohu.com/a/374806316_162522

² See <http://leaders.people.com.cn/n1/2020/0221/c58278-31597855.html>

⁴ See 《广东省新冠肺炎防控指挥办疫情防控组关于印发广东省商业服务区复工复市新冠肺炎疫情防控工作指引（第二版）的通知》；杭州市《关于完善企业复工“负面清单”管理机制的通知》；山东省《关于统筹抓好服务业疫情防控和有序开业复工的指导意见》

⁵ See 《朝阳区商务楼宇新冠肺炎疫情防控工作告知书》

⁶ See <http://www.jingan.gov.cn/xwzx/002020/20200213/b2897c7a-a94d-4167-bad8-46a2d5ae2083.html>

⁷ See http://www.hangzhou.gov.cn/art/2020/2/10/art_812262_41896700.html;
http://cdjx.chengdu.gov.cn/cdsjxw/c132949/2020-02/01/content_ac1742242ad741e2a45243249be60c7a.shtml; <http://www.sispark.com.cn/sispark-news-8924.html>;
http://daily.cnnb.com.cn/nbwb/html/2020-02/18/content_1209562.htm?div=-1;
<http://sz.people.com.cn/n2/2020/0204/c202846-33761874.html>

⁸ See <https://baijiahao.baidu.com/s?id=1658921194249222427&wfr=spider&for=pc>

⁹ See 《劳动合同法》第 32 条；《劳动法》第 52、54 条

¹⁰ See 《传染病防治法》第 12、27、31 条

¹¹ See <http://www.sispark.com.cn/sispark-news-8924.html>;
http://www.hangzhou.gov.cn/art/2020/2/7/art_1256296_41889631.html;
http://www.sz.gov.cn/cn/xxgk/zfxxgj/tzgg/content/post_6725142.html

¹² See 《劳动合同法》第 4 条

¹³ See http://www.bjft.gov.cn/zfxxgk/ftq11GG36/zxgk/2020-02/17/content_5833aa6610844aa486d7ca7d3d3c5d68.shtml ; <http://sh.sina.com.cn/news/m/2020-02-12/detail-iimxyqvz2137876.shtml>; https://www.sohu.com/a/374113276_391251;
<https://baijiahao.baidu.com/s?id=1658067371924548770&wfr=spider&for=pc>;
<http://www.sispark.com.cn/sispark-news-8924.html>

¹⁴ See <https://baijiahao.baidu.com/s?id=1658229105357505613&wfr=spider&for=pc>

¹⁵ See 北京五政府部门联合发布的《关于进一步明确在商务楼宇内办公单位防疫要求的通告》

¹⁶ See 《个人信息安全规范 (GB/T 35273-2017)》第 5.4 条