

Legal Commentary

February 14, 2020

Detailed Explanation of the Latest Opinions on Resuming Work and Production Issued on February 7 by the Ministry of Human Resources and Social Security

Author: Will HUANG | Xiu PEI

Enterprises in most regions of China resumed work and production on February 10, 2020. On February 7, the Ministry of Human Resources and Social Security, together with the All-China Federation of Trade Union, the China Enterprise Confederation, and the National Federation of Industry and Commerce issued the “*Opinions on Stabilizing Employment Relationships and Supporting the Work and Production Resumption of Enterprises During the Period of COVID-19 Epidemic Prevention and Control*” (the “**Opinions**”).

The Opinions were issued by bodies including governmental departments, trade unions and enterprises associations, and are notable as they may fully and accurately reflect the central government’s determination and plan to stabilize employment relationships during the period of epidemic prevention and control. We have summarized the main points for your reference below.

Policy orientation: safeguarding enterprises, employment, and stability

The normal production and operation of enterprises (especially small- and medium-sized enterprises) have been deeply impacted during the period of epidemic prevention and control. Employees face challenges along with enterprises, so their income and job positions will inevitably also be impacted.

For the purpose of avoiding the external pressure brought by the epidemic, which may result in increased employment relationship conflicts and even social instability, the central government is aiming to resolve problems surrounding the stability of employment relationships.

The basic policy orientation for resolving such problems is policies “without bias”—to aid enterprises and protect employees at the same time by “safeguarding enterprises, employment, and stability”. Employees’ interests cannot be sacrificed to save the market, nor can the pressure of protecting employees be wholly transferred to enterprises which would lead to further adverse consequences.

Policy instruments: categorized interpretation of specific measures

Based on the policy orientation of “safeguarding enterprises, employment, and stability”, we have divided the policy instruments contained in the Opinions into the following three categories and summarized their respective contents:

I. Category I: protection of employees’ rights and interests

1. Enterprises are encouraged to arrange for employees to work from home. In the absence of conditions for working from home, employees can be arranged to take statutory and additional annual leave.
2. Employees are encouraged to commute on a flexible schedule in order to reduce the scale of gatherings and to control the risk of infection.
3. Enterprises cannot terminate employment relationships with employees that are under quarantine, and should regard such employees as providing regular labor services and pay salaries in accordance with normal working standards.
4. After the end of quarantine, employees who continue to receive medical treatment and cannot provide labor services are entitled to the benefits of medical treatment period.
5. For employees that worked overtime during the extended Spring Festival holiday (from January 31 to February 2), enterprises should first arrange compensatory time-off or pay overtime salaries if such compensatory time-off is not feasible.

II. Category II: enterprise employment management rights

1. Enterprises that meet the conditions to resume work can request their employees to return to work, provided that necessary epidemic prevention and labor protection measures are provided. Enterprises can handle in accordance with law those employees who are refuse to return to work after exhortation or who refuse to return to work without proper reasons.
2. During the work postponement period or pending returning to work, if employees have fully utilized all types of leave, the payment of salaries should be handled in accordance with the regulations on the enterprise’s shutdown or production halt: the enterprise will pay the full amount of salaries based on the standard stipulated in the employment contracts for the first month, and pay “living allowances” starting from the second month (for example, Beijing Municipality regulations stipulate the standard for “living allowances” is 70% of the local minimum salary standard.)
3. Enterprises that have difficulty in production and operation due to the impact of the epidemic can take measures on stabilizing job positions, including adjusting salaries, rotating holidays, shortening working hours, etc., through democratic consultation processes with the employees.
4. Enterprises that are not able to pay salaries timely can be directed to consult with the labor union or employee representatives on postponing payment.
5. Enterprises can conduct layoffs if the operation difficulties still cannot be relieved by the above

measures.

III. Category III: support funds provided by government departments and trade unions

1. Unemployment insurance funds (human resources and social security bureaus): expand the scope of job stability subsidies enjoyed by small and micro enterprises.
2. Training fee subsidies (human resources and social security bureaus): online and offline employee trainings arranged during the shutdown and recovery period are included in the scope of subsidized training.
3. Trade union funds (trade union organizations): trade union funds contributed by qualifying small and micro enterprises impacted by the epidemic are to be fully refunded.
4. Special trade union funds for epidemic prevention (trade union organizations): enhance solicitude for employees working on the frontline of epidemic prevention.
5. Enterprise association membership dues (trade unions and enterprises associations): a certain percentage of the membership dues contributed will be refunded to qualifying enterprises with difficulties due to the impact of the epidemic.

Please note that the Opinions are policies issued at the central government level, and mainly concern guidance and encouragement measures. During their implementation, enterprises should continue to monitor for the epidemic prevention and control measures published locally and policy updates.

Important Announcement

This Legal Commentary has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

If you have any questions regarding this publication, please contact:

Wei (Will) HUANG

Tel: +86 21 6080 0967

Email: will.huang@hankunlaw.com