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## Employment Updates: Labour Issues Under the COVID-19 Outbreak

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Because of the COVID-19 outbreak, the resumption of normal work after the Chinese New Year break has been substantially disrupted in both China and Hong Kong. In mainland China, the Chinese New Year holidays were officially extended for 3 days to 2nd February 2020. Many employees have been prevented from returning from their home towns to the cities to attend work because of the robust intra-city travel restrictions and quarantine requirements. There have been measures at the local municipal level limiting the number of individuals per household going out and the number of employees attending the workplace on a daily basis as well as the general work suspension requirement according to the nature of the businesses. In Hong Kong, the government has taken the lead to arrange the civil servants to work from home after the Chinese New Year holidays, and some of the public services have been suspended or slowed down.

As a result, businesses have to make special arrangement for the employees to suspend work, work from home or to report duties on a rotation basis. For certain industries like the medical and care industry, employees have to work overtime to meet the epidemic control requirements.

### I. MAINLAND CHINA

To cater for the special circumstances, the authorities in mainland China have issued guidance on the policy with respect to the employment issues arising from the special work arrangement. While the policy may vary subject to the different policies implemented in provincial or municipal level, the general guideline is as follows:-

1. During the period of suspension of work caused by the epidemic, if work from home arrangement is not possible, the employer shall arrange the employee to take annual leave. If the employee works from home, the employee shall be entitled to normal full pay.

2. If the employee is prevented from returning to the workplace because of the special travel, quarantine or other measures imposed by the government, the employer shall arrange the employee to take annual leave. If the employee is prevented from returning to the workplace because of business trip, the employee shall be entitled to normal full pay.

3. The employer is prohibited from terminating the employment contract with the employee who is not able to return to workplace or perform the employment duties because of the special travel, quarantine or other measures imposed by the government. If the term of the employment contract ends on a day when the employee is subject to the aforesaid measures, the contract term will be extended automatically until such measures are lifted.

4. For the employees who are required to work during the extended holidays, the employers shall arrange the employees to take compensation leave or to pay overtime pay (equivalent to double of the normal pay).

5. After the resumption of businesses, the employers shall implement measures to ensure that the workplace is not "overcrowded" by reducing the number of employees attending work. Measures have also to be in place to monitor the body temperature of the employees. Employers are also encouraged to provide sufficient epidemic prevention supplies like face masks, sanitizers, etc. to the employees.

Apart from the above, depending on the actual circumstances and to ease the hardship arising from the difficult circumstances, the employer is also encouraged to negotiate with the employees to agree on the working arrangement, including flexible working hours, shift arrangement, adjustment of work hours, payment of statutory minimum salary in lieu of full pay during the suspension of work, etc.

## II. HONG KONG

While the Hong Kong Government arranged for most of the civil servants to work from home from 29th January 2020 onwards (they resumed work on 2nd March 2020) to limit the spreading of the novel coronavirus in the city, employers in the private sector are free to make flexible work arrangement for their employees in accordance with their operational needs. Although there is no legal obligation for an employer to devise and implement a specific work plan due to the COVID-19, employers are under a duty to ensure the safety and health in the workplace of all their employees so far as reasonably practicable under the Occupational Safety and Health Ordinance (Cap. 509) and the common law duty of care. As such, employers should, apart from measures ensuring the cleanliness and hygiene of the workplace, consider implementing appropriate measures to discharge the duty towards their employees, which may include devising "work from home" policy for employees with symptoms related to the contracting of COVID-19 or have contact with people affected by the virus, issuing guidelines on arrangements of meetings with clients and travel, etc.

In making work arrangements and devising any workplace plan, employers should note that they should comply with the terms of the employment agreements and the employment laws. Particular attention should be drawn in case any such arrangement or plan may amount to a variation of the employment terms. For example, while employers can choose to reduce the working hours of full-time employees during the COVID-19 outbreak, they cannot refuse to pay the full wages because of such unilateral reduction. Further, any act which may involve in the temporary suspension or reduction of the employees' duties or will affect the remuneration and benefits of the employees under the employment agreements should only be implemented after obtaining the employees' consent.

In recent years, the Chinese government and the China National Intellectual Property Administration ("CNIPA") have been promoting enforcement of patent rights through administrative actions.

In a recent notice published by the CNIPA in November 2019, the CNIPA announced the launch of a project to refine the current system of handling administrative complaints relating to patent infringement and to advocate the significance of such mechanism (the "Project"). Under the Project, the CNIPA aims to enhance the following aspects of the current system:-

## 1. Strength of Framework

Regularly issue policies, determinations and interpretations to strengthen and standardize the administrative enforcement measure procedures at the local level.

## 2. Ease of Access

Authorities are encouraged to strengthen their efforts and broaden the scope in promoting administrative measure as a means for dispute resolution.

## 3. Innovative Protocol

Simplify and optimize case management procedures.  
Establish mechanisms for hearings in writing.

## 4. Communication and Coordination

- (i) Refine the workflow for cases under mediation and administrative investigation.
- (ii) Establish a system of recordal of undisputed facts to improve efficiency of ruling of the same case by different adjudicating bodies.

## 5. Case Management Structure

Establish hierarchical structure for personnel and institutions for distribution of cases of different significance.

## 6. Capability and Infrastructure

- (i) Form professional teams for handling administrative decisions.
- (ii) Train existing adjudicators and increase qualification threshold for adjudicators.

It was announced by the CNIPA in early March 2020 that "Pilot Sites", namely Beijing, Hebei, Shanghai, Jiangsu, Zhejiang, Hubei, Guangdong, and Shenzhen, will be the first batch of places to carry out and demonstrate a newly proposed model for handling administrative complaints. The Pilot Sites are to commit to the Project for a duration of 2 years.

Based on the results and feedback from the Pilot Sites, the CNIPA will determine the second batch of pilot sites and expand the coverage of the Project to increase the guidance and support to the local authorities throughout the country, and strengthen coordination, evaluation and inspection processes.

In the past, administrative complaint may not be the preferred option for the right owners to deal with patent infringement issues because of the uncertainties in terms of the procedure and time required. While it remains to be seen as to how the Pilot Sites will implement the refined mechanism in practice, CNIPA's demonstrated commitment to promote the patent administrative complaint is a positive move to strengthen the effectiveness of patent rights protection in China.

We will continue to monitor the relevant practice in the Pilot Sites and keep you posted of any further development.