

# COVID-19 and Labour Law: China

Wenwen Ding\*

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## Abstract

The Chinese government has provided special protection for workers who are, or might be, affected by the coronavirus, or who are in close contact with coronavirus patients, and are thus under mandatory quarantine. It has also required employers to continue paying employees when enterprises suspend production. To ensure unemployed workers' a basic living, the government has adjusted the unemployment insurance by simplifying the application process and expanding its coverage to include more unemployed workers for a longer period. To support affected employers and to save jobs, the government has reduced or deferred employers' payment of social insurance contributions. Migrant workers, the most affected group, have received special financial and employment support as well.

**Keywords:** Covid-19; Labour Law; Unemployment Insurance; Health and Safety; Social Protection; Migrant Workers; Social Partners

## 1. General Framework

China, where the coronavirus originated last year in the city of Wuhan, reported its first COVID-19 death in early January. The pandemic quickly spread across the country. The number of cases of COVID-19 peaked in mid-February and has steadily declined since then. On March 18, China declared zero new cases for the first time and the virus outbreak has stalled since then.

Since mid-January 2020, Chinese authorities have introduced unprecedented measures to contain the virus. These measures have severely affected employment relations and working conditions, and include lockdowns, travel restrictions, mandatory quarantines, social distancing, public holiday extensions, the delaying of business resumption, and the closing of factories and schools. The measures were intended to prevent the spread of the virus and they seem to be effective, as Covid-19 has currently been largely contained in China. But they have caused tremendous financial losses to big and small businesses, and significant job and wage losses to individuals. During the peak of the outbreak, February 2020, the surveyed unemployment rate rose to a record high of 6.2%.<sup>1</sup> Even after China resumed work and production in April, the unemployment rate remained near 6%, a historic high<sup>2</sup>. Additionally,

\* Visiting Scholar, University of Virginia Law School; S.J.D.'19, University of Virginia Law School.

<sup>1</sup> Data from the Chinese National Bureau of Statistics, <http://data.stats.gov.cn>.

<sup>2</sup> Data from the Chinese National Bureau of Statistics, <http://data.stats.gov.cn>.

the business closure order also decreased labor demands. According to the National Bureau of Statistics, the number of newly created jobs in the first quarter of 2020 declined to nearly 30% compared to the same time the previous year<sup>3</sup>.

Despite the coronavirus outbreak, the Chinese government has not declared a national state of emergency. Nevertheless, the Law on Emergency Responses gives the central and local governments the authority to take measures in response to the epidemic outbreak, and in response to the effects on workers and employers of the government's virus containment policies<sup>4</sup>.

## 2. Specific Measures

### 2.1 Support for Affected Workers

The government has issued several policies to ensure that workers have a basic living and that they are not abusively discharged during the epidemic period.

First, workers who are affected or might be affected by the coronavirus, or who are in close contact with coronavirus patients, receive special protection during the mandatory quarantine period<sup>5</sup>: (1) employers should continue paying these workers their regular level of wages, even when these workers are unable to work due to mandatory quarantine or other government-imposed mandatory measures. This new policy has legal basis – the Law on the Prevention of Infectious Diseases requires an employer to pay a worker should during the period of quarantine<sup>6</sup>. The recent policy just provided more details about implementing this provision; (2) there is a temporary prohibition of dismissals and suspensions. Workers in these categories cannot be terminated because they are incompetent or because the employer is conducting economic dismissals; (3) an employment contract that would expire during the compulsory quarantine period, is automatically extended until the end of this period<sup>7</sup>.

Second, the government requires that an employer continue to pay its employees even if the employer suspends production. If the suspension is within a wage payment cycle, the enterprise must pay the worker's regular salary. If the suspension lasts longer than one cycle, the employer must continue to pay the employee an amount that is not lower than the local minimum wage standard<sup>8</sup>.

Third, to maintain the basic living of unemployed workers, the government has adjusted the current unemployment insurance system in the following ways, in order to simplify the process and to cover more unemployed workers for a longer period: (1) It has extended the

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<sup>3</sup> Data from the Chinese National Bureau of Statistics, <http://data.stats.gov.cn>.

<sup>4</sup> Law on Emergency Responses, article 7 (2007).

<sup>5</sup> Department of Human Resources and Social Security, Notice on Properly Handling Labor Relations during the Prevention and Control of Coronavirus Infection Period, Jan.24, 2020.

<sup>6</sup> Law on the Prevention of Infectious Diseases, article 41(2) (2005).

<sup>7</sup> Department of Human Resources and Social Security, Notice on Properly Handling Labor Relations during the Prevention and Control of Coronavirus Infection Period, Jan.24, 2020.

<sup>8</sup> Department of Human Resources and Social Security, Notice on Properly Handling Labor Relations during the Prevention and Control of Coronavirus Infection Period, Jan.24, 2020.

period for claiming unemployment insurance benefits. Normally unemployed workers must apply for unemployment insurance benefits within 60 days of the termination of their labor contract<sup>9</sup>. The government has now relaxed this 60-day requirement and unemployed workers cannot be denied benefits because of it<sup>10</sup>. (2) The government has simplified application process. Instead of requiring an ID, proof of the end of the labor contract, and an unemployment registration certification,<sup>11</sup> employees need now present only an ID or social security card.<sup>12</sup> In addition, all applications have now been moved to online<sup>13</sup>. These measures definitely expediate the application process. (3) The government has expanded unemployment insurance coverage to cover more workers and for a longer period. Two types of unemployed workers — those who do not meet the requirements for unemployment insurance or those who have already received unemployment insurance benefits but are still unemployed, can receive a six-month unemployment subsidy, although the benefit level cannot be higher than 80% of the unemployment insurance benefits. Furthermore, those who are still unemployed after receiving the unemployment insurance payment and are less than one year away from the legal retirement age, will receive unemployment insurance until they reach their legal retirement age<sup>14</sup>.

## 2.2 Support for Affected Businesses

To help businesses survive and to save jobs, the government has reduced certain costs for employers and provided them with financial assistance.

The most notable reduction of costs relates to the social insurance contribution rate<sup>15</sup>. Several government departments have jointly issued a notice that exempts<sup>16</sup> small, medium and micro-sized enterprises from paying pension, unemployment, and occupational injury contributions for as long as five months from February, and that exempts large enterprises from paying half of the three types of social insurance contributions for as long as three months from February<sup>17</sup>.

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<sup>9</sup> Measures for Application for and Payment of Unemployment Insurance, article 6 (2018).

<sup>10</sup> Opinions on Strengthening Employment Stabilization Measures in Response to the Impact of the Coronavirus Epidemic, The General Office of the State Council, March 20, 2020.

<sup>11</sup> Measures for Application for and Payment of Unemployment Insurance, article 7(2018).

<sup>12</sup> General Office of the Ministry of Human Resources and Social Security, Notice on Furthering Advancing the Simplification of Receiving Unemployment Insurance Benefits, March 5, 2020.

<sup>13</sup> Opinions on Strengthening Employment Stabilization Measures in Response to the Impact of the Coronavirus Epidemic, The General Office of the State Council, March 20, 2020.

<sup>14</sup> General Office of the Ministry of Human Resources and Social Security, Notice on Furthering Advancing the Simplification of Receiving Unemployment Insurance Benefits, March 5, 2020.

<sup>15</sup> Notice on Periodic Reduction and Exemption of Corporate Social Insurance Fees, Ministry of Human Resources and Social Security, Ministry of Finance, General Administration of Taxation, February 20, 2020.

<sup>16</sup> In Hubei province, the centre of the outbreak, all types of enterprises can be exempted from paying the three types of insurance contributions for as long as five months.

<sup>17</sup> Notice on Periodic Reduction and Exemption of Corporate Social Insurance Fees, Ministry of Human Resources and Social Security, Ministry of Finance, General Administration of Taxation, February 20, 2020.

Additionally, enterprises that have serious difficulties in production and operation due to the epidemic situation may apply to defer their payment of social insurance premiums for not more than six months, in principle<sup>18</sup>.

To encourage employers to discharge fewer employees, the State Council has furthered the repayment of unemployment insurance premiums policy — first created in 2019 — when employers, especially medium, small, and micro-sized enterprises, fire fewer workers within a year<sup>19</sup>. Other types of policies to support employers include tax reduction and exemption, employment allowance, and so forth.

In addition, the government has stated that if enterprises experience operational difficulties due to the pandemic, they can negotiate with employees to adjust wages, rotate work, or cut working hours<sup>20</sup>.

### 2.3 Social Protection

Parents have faced increased caregiving duties due to school and day care closures. There are currently no national measures that address this issue. However, several local governments, most notably Beijing, have issued policies that allow one parent per family to stay at home to care of their minor child during the prevention and control of the coronavirus period<sup>21</sup>.

### 2.4 Health and Safety of Workers

The spread of Covid-19 itself has increased risks for workers' health and safety. In order to decrease the risk of infection, the government has imposed mandatory quarantine on certain areas. Workplaces have implemented various measures, including remote work, flexible working hours, and a rotation working system. The national health insurance has started to reimburse for online medical consultations, as these reduce the risk of spreading the virus.

Occupational injury insurance would usually not apply to workers who contract coronavirus during work hours in their workplace, because current regulations do not view

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<sup>18</sup> Notice on Periodic Reduction and Exemption of Corporate Social Insurance Fees, Ministry of Human Resources and Social Security, Ministry of Finance, General Administration of Taxation, February 20, 2020.

<sup>19</sup> Notice on Periodic Reduction and Exemption of Corporate Social Insurance Fees, Ministry of Human Resources and Social Security, Ministry of Finance, General Administration of Taxation, February 20, 2020.

<sup>20</sup> Department of Human Resources and Social Security, Notice on Properly Handling Labor Relations during the Prevention and Control of Coronavirus Infection Period, Jan.24, 2020.

<sup>21</sup> Notice on the Wages and Benefits regarding Enterprise Employees Taking Care of Minor Children due to the Postponement of Schools caused by the Prevention and Control of Coronavirus, Beijing Municipal Government's Department of Human Resources and Social Security Bureau and Beijing Municipal Education Commission, January 31, 2020.

coronavirus as an occupational disease<sup>22</sup>. However, the government has broadened the coverage scope for medical workers who contract coronavirus while fulfilling their work<sup>23</sup>.

## 2.5 Special Protection

The outbreak of the virus has affected rural migrant workers, who account for one-third of China's labour force, the most severely. These are workers who have left rural areas to work in urban ones. Due to their lack of urban household registration, most of them work primarily in the informal sectors and do not have access to the same social welfare benefits (such as unemployment insurance) as workers with registrations in urban areas. The virus outbreak started when the majority of migrant workers were back in their rural home to celebrate the Chinese New Year. Because of lockdown and travel restrictions, these workers have been confined to the countryside and cannot travel back to urban areas to find jobs. In addition, the areas in which these workers usually work – including the manufacturing industry, the export-oriented industry, restaurants, hotels, and tourism – are those that have been hardest hit by the spread of COVID-19. The government has taken specific actions in order to promote these workers' employment. It has provided financial support to enterprises that can hire certain numbers of migrant workers; has facilitated connections between workers who need jobs and enterprises that need workers; has arranged transportation for migrant workers who are going to big cities to work; and enhanced infrastructure building in rural areas to provide job opportunities for migrant workers<sup>24</sup>.

## 3. Social Dialogue

The Social Partners have not played any role in the design of these measures nor has the government invited any Social Partners to participate in the legislative process. However, the central government has instructed the local governments to guide enterprise unions and workers as they negotiate wages and working conditions. In support of this, the Department of Human Resources and Social Security, the All-China Federation of Trade Unions — the only trade union recognized by the Chinese Communist Party — and the China Enterprise Confederation / China Entrepreneurs Association jointly issued an “Opinion,” which recommended that employers and unions negotiate wages, working hours, rest days, occupational safety and health, and other working conditions<sup>25</sup>. In practice, employers and unions in some areas have conducted collective consultations. However, whether these were

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<sup>22</sup> Social Insurance Law, article 36; Regulation on Occupational Injury Insurance, article 14 and 15.

<sup>23</sup> Ministry of Human Resources and Social Security, Department of Finance and National Health Commission, Notice on the Issues Related to Medical Workers Contracting Coronavirus due to the Performance of their Duties, Jan. 23, 2020.

<sup>24</sup> Opinions on Strengthening Employment Stabilization Measures in Response to the Impact of the Coronavirus Epidemic, The General Office of the State Council, March 20, 2020.

<sup>25</sup> Opinions on Maintaining Stable Labour Relations and Supporting Enterprises Production Resumption during the Preventing and Controlling Coronavirus Infection Period, February 8, 2020.

genuine collective consultations is questionable, as unions in China are not independent, so are not an effective voice for Chinese workers. Overall, Social Partners play a very limited role, if any, in addressing the impact of COVID-19.

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