

SHANGHAI LOCKDOWN – LABOUR LAW AND CONTRACTUAL ISSUES

LABOUR LAW RELATED MATTERS

Wages During Lockdown

Policies have been issued on this matter jointly by the Shanghai High People's Court and the Human Resources and Social Security Bureau:

- A. Employee working from home normally - Normal Wages.
- B. Employee offering reduced labour - Employees may be asked to utilize their annual leave or accumulated overtime hours and shall be paid wages in accordance with the provisions of that leave.
- C. Employees being unable to work from home - Normal wage for one payment cycle, thereafter, employers may after negotiating with the employees reduce pay to the minimum wage rate prescribed by the local authorities of the applicable jurisdiction.

Termination of Labour Contracts

- A. Termination of a Labour Contract during lockdown shall be subject to severe scrutiny by courts and tribunals and an employee will be entitled to severance, if terminated.
- B. Termination of labour contracts during lockdown should be considered as a last resort.
- C. Judicial bodies will evaluate material change of the circumstances from when the employment contract was signed; and if the parties are unable to negotiate a change to the contract.
- D. Considering the lockdown is temporary, courts and tribunals shall not grant "lockdown" as "material change of circumstances".

Contractual Obligations and Force Majeure

- A. Although the epidemic meets the characteristics of force majeure, whether it can be used as a civil exemption in each legal relationship needs to be analyzed on a case-by-case basis.
- B. Burden of proof lies on the party seeking to claim force majeure.
- C. Steps to claim force majeure:
 - Inform the other party of the contract as soon as possible.
 - Provide written evidence to prove the inability to perform the contractual obligation.
 - Party affected by force majeure should take reasonable measures to mitigate the losses of the other party.
 - Evidence should be provided within a reasonable time limit.