

**上海申浩律师事务所
关于上海地区企业新冠肺炎疫情防控期间
企业劳动用工相关法律问题的参考指引**

**Guidance on Employment Related Legal Issues
During 2019-nCoV Outbreak in Shanghai**

2019年末至2020年初之际，突如其来的新冠肺炎爆发，防控和阻断病毒的继续传播，国务院、中央有关部门和上海市政府、人社部门根据《传染病防治法》和《突发事件应对法》等相关法律规定，发布了多个政策文件，调整企业在疫情防控期间的劳动关系履行的各个方面。

Late 2019 to early 2020, there was a sudden disease outbreak of the Novel Coronavirus Pneumonia (2019-nCoV). In order to prevent and control the epidemic infection, and upon the “Infectious Diseases Prevention Law” and “Emergency Response Law” as well as other relevant Laws and regulations, a number of regulatory stipulations have been issued to adjust the performance of the labor and employment relationship during the outbreak by authorities at all level such as the State Council, departments of the Central Government, the Shanghai Municipal Government and the Human Resources and Social Security Department.

中央和上海市主要政策文件有：

The main regulatory stipulations issued by central government and Shanghai Municipality include:

1. 人力资源和社会保障部《关于因履行工作职责感染新型冠状病毒肺炎的医护及相关工作人员有关保障问题的通知》，文号：人社部函【2020】11号。
“Circular on the Protection of Medical Staff and Related Personnel Infected by Novel Coronavirus Pneumonia due to Performance of their duties” issued by Ministry of Human Resources and Social Security (Circular No.11 issued in 2020).
2. 人力资源和社会保障部办公厅《关于妥善处理新型冠状病毒感染的肺炎疫情防控期间劳动关系问题的通知》，文号：人社厅发明电【2020】5号。
“Circular on the Proper Handling of Labor Relation Issues during the Prevention and Control of the Pneumonia Outbreak Caused by the Novel Coronavirus Infection” issued by the General Office of the Ministry of Human Resources and Social Security (Circular No.5 issued in 2020).
3. 人力资源和社会保障部《关于做好新型冠状病毒感染肺炎疫情防控期间稳定劳动关系支持企业复工复产的意见》，文号：人社部发〔2020〕8号
“Opinions on Stabilizing Labor Relations and Supporting Enterprises’ Operations and Productions during the Prevention and Control of the Pneumonia Outbreak Caused by the Novel Coronavirus Infection” issued by Ministry of Human Resources and Social Security (Circular No.8 issued in 2020)

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4. 国务院办公厅《关于延长 2020 年春节假期的通知》，文号：国办发明电〔2020〕1 号。

“Circular on Extending the Spring Festival Holiday in 2020” issued by General Office of the State Council (Circular No.1 issued in 2020).

5. 财政部《关于新型冠状病毒感染肺炎疫情防控经费有关保障政策的通知》，文号：财社【2020】2 号。

“Circular on the Relevant Guarantee Policies of Allocating Funds for the Prevention and Control of Pneumonia Outbreak caused by the Novel Coronavirus Infection ” issued by Ministry of Finance (Circular No.2 issued in 2020).

6. 上海市人民政府《关于延迟本市企业复工和学校开学的通知》。

“Circular on Delaying Enterprises’ Operations and School Opening in Shanghai” issued by Shanghai Municipal People’s Government.

7. 上海市人力资源社会保障局《关于应对新型冠状病毒感染肺炎疫情实施支持保障措施的通知》。

“Circular on the Implementation of Supporting and Protective Measures in Response to the Pneumonia Outbreak Caused by the Novel Coronavirus Infection issued by the Shanghai Municipal Human Resources and Social Security Bureau. ”

8. 上海市人力资源社会保障局《应对新型冠状病毒感染肺炎疫情人社保障措施细解》。

“Detailed Interpretation of Measures for Protecting People and Society in Response to the Pneumonia Outbreak Caused by the Novel Coronavirus Infection” issued by the Shanghai Municipal Human Resources and Social Security Bureau.

9. 《上海市全力防控疫情支持服务企业平稳健康发展的若干政策措施》

“Policies and Measures on Supporting Service Industry to Sustain Stable and Healthy Development in Shanghai during the Prevention and Control of the Pneumonia Outbreak Caused by the Novel Coronavirus Infection”

上述政策文件和措施的出台和施行，影响着企业劳动关系调整的各方面，为此，上海申浩律师事务所针对涉及各企业重大利害关系的劳动用工法律问题，出具本法律参考指引，为企业客户提供有效的帮助。本参考指引仅为上海申浩律师事务所在依据现行法律法规及相关规范性文件、法律实务基础之上总结，仅供客户企业决策参考，并非司法实践统一裁判口径。针对相关争议问题，若最高人民法院、劳动或者其他有关部门出具相关解释或意见的，应当以其为准。

The promulgation and implementation of these stipulations and measures affect all aspects of the labor and employment relationship of enterprises. As such, Shanghai SunHold Law Firm has issued this guidance on legal issues of the labor and employment relationship during this special period to provide effective help for enterprises. This guidance is only a

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summary based on the existing Laws and regulations, relevant normative stipulations and legal practice, and is only for the reference to concerned clients for their possible decision-making, which is not the unified judgment of judicial practice. For relevant disputes, provided that the Supreme People's Court, labor or other departments issue relevant explanations or opinions, such explanations or opinions shall prevail.

一、延长假期、延迟复工期间与工资报酬支付的问题处理

Issue on the extended leave, the postponed resumption period and the payment of wages and remuneration

1、国务院延长假期的法律性质和工资报酬支付标准。

The legal nature of the State Council's extended holidays and the standard of payment

根据国务院办公厅《关于延长 2020 年春节假期的通知》，延长 2020 年春节假期至 2 月 2 日（农历正月初九，星期日），2 月 3 日（星期一）起正常上班。即原本 1 月 31 日和 2 月 1 日两天工作日调整为休息日，原本 2 月 2 日属于休息日，无需再调整。因此，延长 2 天假期属于防控疫情的特殊假期，不属于法定节假日，作为一般休息日对待。

According to "Circular on extending the Spring Festival holiday in 2020" issued by the General Office of the State Council, the 2020 Spring Festival holiday will be extended till February 2 (the ninth day of the first month of the lunar calendar, Sunday), and work day starts on February 3 (Monday). That is to say, the original working days of January 31 and February 1 are adjusted to days off, and February 2 is a day off without any further adjustment. Therefore, the extension of two-day holiday is a special holiday for epidemic prevention and control, not a statutory holiday, which should be treated as a general day off.

劳动者在延长假期中正常休息的，用人单位支付正常工资即可。劳动者因疫情防控不能休假而加班工作的，应视为休息日加班，用人单位应根据《劳动法》规定，按照正常工资的 200% 支付加班工资，或在其他工作日安排补休。对于不定时工作制的劳动者，在延长假期期间工作的，用人单位无需支付加班工资。If the employee does not work during the extended holidays, the employer should pay him the normal wage. If the employee works during the extended holidays, it shall be deemed as working overtime. The employer shall pay the overtime wage at 200% of the normal wage according to the provisions of the Labor Law, or arrange the compensatory off on other working days. As for employers taking the flexible working hour system, if an employee works during the extended holiday period, the employer does not need to pay overtime wage.

2、上海市政府规定延迟复工期间（2 月 3 日至 2 月 9 日）的法律性质和工资报酬支付标准

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Legal nature and payment standard of wages and remuneration during the period (3rd Feb. to 9th Feb.) of the postponed resumption of work Stipulated by Shanghai Municipal People's Government

2020年1月27日，上海市人民政府发布《关于延迟本市企业复工和学校开学的通知》，规定上海市区域内各类企业不迟于2月9日24时前复工（即2月10日起复工）。涉及保障城市运行必需（供水、供气、供电、通讯等行业）、疫情防控必需（医疗器械、药品、防护用品生产和销售等行业）、群众生活必需（超市卖场、食品生产和供应等行业）及其它涉及重要国计民生的相关企业除外。用人单位须依法保障员工合法权益。

On January 27, 2020, the Shanghai Municipal People's government issued the "Circular on Delaying Enterprises' Operations and School Opening in Shanghai", stipulating that all kinds of enterprises in Shanghai will resume work no earlier than 24:00 on February 9 (i.e. from February 10). Exception applies to enterprises related to the vital national economy and the people's livelihood, which are necessary to ensure the city's normal running (industries in relation to the water supply, gas supply, power supply, communication, etc.), epidemic prevention and control (industries in relation to manufactures and sales of the medical equipment, medicine, protective product, etc.), and industries that are necessary for people's life (industries in relation to supermarket, food production, and supply, etc.). The employer should protect the legitimate rights and interests of its employees in accordance with the Laws.

国务院延长假期结束后，原本2月3日至2月7日属于正常工作日的，2月8日和9日属于正常休息日，但出于疫情防控需要，上海市政府规定除特殊行业和企业正常开工和复工外，一般非保障企业需要延迟复工。根据上海市人社局的权威解答，延迟复工期间属于休息日。对于休息的职工，企业应按劳动合同约定的标准支付工资；对于承担保障等任务上班的企业职工，应作为休息日加班给予补休或按规定支付加班工资，通俗地讲，就是两倍工资。对于不定时工作制的劳动者，在延长假期期间工作的，用人单位无需支付加班工资。

After the leave extended by the State Council, the days from February 3 to February 7 were the normal working days, and the days of February 8 and 9 were the normal days off. However, due to the needs of epidemic prevention and control, Shanghai municipal government stipulated that except for those special industries and enterprises mentioned above that should maintain its normal operation, other enterprises need to postpone the resumption of work. According to the authoritative answer of Shanghai Municipal Bureau of Human Resources and Social Security, the period of the postponed resumption of work shall be deemed as the days off. For the employees taking rest, the enterprise shall pay the wage according to the standard agreed in the labor contract; the employees who perform their obligation in the special industries and enterprises shall be given compensatory leave or be paid overtime wage according to the regulations, in general, it is twice of the normal wage. As for employers who taking the flexible working hour system, if an employee works during the extended holiday period, the employer does not need to pay overtime wage.

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此外，即使企业在春节前已安排 1 月 31 日至 2 月 9 日期间的工作日为带薪年假年假的，亦不能以安排年休假抵充延长春节假期和延迟复工期间的休息日。在中央特定政策和上海市特定政策的影响下，我们倾向认为应撤回年假安排，一律应当按照休息日对待。

In addition, even if the enterprise has arranged the working days in the period of January 31 to February 9 by a payment paid as an annual leave does before the Spring Festival, the annual leave cannot be used to offset the days off of the extended spring festival leave and the days off for the postponed resumption of work. According to the specific policies of the central government and Shanghai Municipality, in our view the annual leave arranged should be withdrawn and treated as the days off.

我们建议，企业以明确书面形式安排哪些具体员工于 2 月 3 日至 2 月 9 日期间在家从事哪些具体工作事务，避免个别员工以少量部分工作事务主张全天出勤的两倍加班工资。

We suggest that enterprises should give clear notice in writing for arranging certain works to certain employees who to work at home from Feb 3 to Feb 9, so that those employees who don't maintain full workload would not take any advantage in reporting false workload for the twice wage payment.

目前有人对特殊休息日期间支付工资的标准提出异议，我们建议企业遵守特殊时期的特定政策，企业也可与员工灵活协商特殊期间的工资标准并达成协议，携手奋进、攻克时艰。

At present, some people have raised objections to the wage standard for the special days off. We would suggest that enterprises comply with the specific policies in the special periods. Enterprises may also negotiate with their employees flexible approaches and reach agreements on the wage of this special periods, and then work together to overcome difficulties.

二、因政府防控疫情需要导致职工无法提供正常劳动情形的处理

Issue on employees' failure to return to work due to the prevention and control of the existing epidemic by Government

1、员工隔离治疗期间或医学观察期间的劳动关系处理

Labor relations during quarantine treatment or medical observation

不得解除情形：

Circumstances where employers are not permitted to terminate discharge employment contract:

根据人力资源和社会保障部办公厅《关于妥善处理新型冠状病毒感染的肺炎疫情防控期间劳动关系问题的通知》（文号：人社厅发明电【2020】5号）规定，对新型冠状病毒感染的肺炎患者、疑似病人、密切接触者，在其隔离治疗期间或医学观察期间以及因政府实施隔离措施或采取其他紧急措施导致不能提供正常劳动的企业职工，企业不得依据《劳动合同法》第四十条、四十一条规定

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与职工解除劳动合同（主要指医疗期满、不能胜任工作、客观情况重大变化等情形、经济性裁员的情形）。在此期间，劳动合同到期的，分别顺延至职工医疗期期满、医学观察期期满、隔离期期满或者政府采取的紧急措施结束。

According to Circular No.5 issued in 2020, the employer shall not terminate the labor contract in accordance with articles 40 and 41 of the Labor Contract Law (mainly refers to the medical treatment expiration, incompetence, major changes in objective circumstances based on which the labor contract was concluded and economic layoffs), should the employee be unable to afford normal labor work for who has been confirmed to have the disease of 2019-nCoV, is a suspected patient, or is a close contact to the infected patient, and is under quarantine treatment or medical observation or prevented by other government implements quarantine measures or other emergency measures. During this period, if the labor contract expires, it shall be extended to the expiration of the medical treatment period, the medical observation period, the quarantine period or the end of the emergency measures taken by the government.

我们认为，对于因政府实施隔离措施或采取其他紧急措施导致不能提供正常劳动的劳动者，用人单位不应以员工缺勤、旷工等构成严重违纪为由，与劳动者单方解除劳动合同。

In our opinion, the employer shall not unilaterally terminate the labor contract with the employee on the ground that the absence or absenteeism of the employee constitutes a serious violation of discipline due to the government's quarantine measures or other emergency measures.

可以解除情形：

Circumstances where employers are permitted to terminate the labor contract:

在限制解除情形外，根据《劳动合同法》规定，用人单位和劳动者均可通过协商解除双方之间的劳动合同，劳动者个人亦可通过辞职形式提出解除劳动合同。若劳动者在被隔离治疗或医学观察期间存在不符合录用条件、严重违纪、严重失职、利益冲突、刑事犯罪等情形，用人单位可以依据《劳动合同法》第三十九条规定依法解除劳动合同，不受《劳动合同法》第四十条、四十一条规定不得解除情形的法律限制，但应基本做到事实依据和制度依据充分。

According to the provisions of the Labor Contract Law, both the employer and the employee are entitled to terminate the labor contract through negotiation. The employee is entitled to terminate the labor contract by resignation. For the employee who does not meet the recruitment requirement, seriously violates discipline, seriously neglects his duty, violates the principle of conflicts of interest, or commits criminal crimes and etc., the employer, based on sufficient proof materials, is entitled to terminate the labor contract even if the employee is under quarantine treatment or medical observation according to Article 39 of the Labor Contract Law, and won't be bound by the Article 40 and 41 of the Labor Contract Law.

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若劳动者属于医疗机构内的病人、病原携带者、疑似病人的密切接触者，如果拒绝医学隔离观察、拒不配合治疗或故意传播传染病造成他人感染的，用人单位可以依据规章制度给予处分；劳动者被依法追究刑事责任的，用人单位可以依法解除劳动合同。

If the employee who has been confirmed to have a disease of 2019-nCoV, is the virus carrier, or who has close contact with suspected patients in the medical institution refuses to accept medical quarantine and observation or refuses to cooperate with the medical treatment or intentionally spreads infectious diseases and causes other people's infection, the employer is entitled to take disciplinary action, in accordance with the rules and regulations. For employee who commits a crime, the employer is entitled to terminate the labor contract legally.

企业因疫情防控需要职工提前返岗的，如防控用品生产企业加班生产或者政府要求的其他紧急保障防护措施需要加班等情况，属依法延长工作时间，职工不按要求返岗，单位有权按照旷工进行处理。

Where those special enterprises are entitled to require the employees to return to work in advance, to produce the disease protective gears and material overtime or to perform emergency protective measures as required by the government in order to help preventing and controlling the existing epidemic, the employers are entitled to legally extend the work time. If the employees do not return to work as required, the employers have the rights to give a kind of disciplinary punishment of as absenteeism.

如果员工编造与突发传染病疫情有关的恐怖信息，可能构成编造、故意传播虚假恐怖信息罪；或员工故意传播“新型肺炎”等传染病病原体，拒绝接受检疫、强制隔离或治疗等，可能构成以危险方法危害公共安全罪或者过失以危险方法危害公共安全罪。用人单位可以依据《劳动合同法》或依照本单位规章制度，解除与劳动者之间的劳动合同。

When the employee fabricates the terrorist information related to the outbreak of infectious diseases, it may constitute a crime of fabricating or deliberately disseminating false terrorist information. When the employee intentionally disseminates infectious disease pathogens such as 2019-nCoV and refuses to accept quarantine, compulsory isolation or treatment, it may constitute a crime of endangering public security by dangerous means or the crime of negligently endangering public security by dangerous means. Under these circumstances the employers is entitled to terminate the labor contract with the employee legally.

劳动合同期满顺延：根据人社厅发明电【2020】5号文规定，在此特殊期间，劳动合同到期的，分别顺延至职工医疗期期满、医学观察期期满、隔离期期满或者政府采取的紧急措施结束。

Extension of expired labor contract: according to the stipulations of Circular No. 5 issued in 2020, during this special period, if the labor contract expires, it shall be extended to the expiration of the medical treatment period, the expiration of the medical observation period, the expiration of the quarantine period or the termination of the emergency measures taken by the government.

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我们认为，经隔离观察排除是新型肺炎病人或疑似病人的，用人单位可以依法终止劳动合同；劳动者被确诊为肺炎患者接受治疗时，其劳动合同不能终止，需要等待劳动者医疗期期满或治疗期满才能依法终止劳动合同。

In our view, the employer is entitled to legally terminate the labor contract with the employee who is confirmed not to be infected with the 2019-nCoV after quarantine observation. However, the employer is not entitled to terminate the labor contract with the employee who is confirmed to be infected with the 2019-nCoV and is under medical treatment until the expiration of the medical or treatment period.

2、员工隔离治疗期间或医学观察期间的工资报酬处理

Wages or remunerations during quarantine treatment or medical observation

根据人社厅发明电【2020】5号文规定，对新型冠状病毒感染的肺炎患者、疑似病人、密切接触者在其隔离治疗期间或医学观察期间以及因政府实施隔离措施或采取其他紧急措施导致不能提供正常劳动的企业职工，企业应当支付职工在此期间的工作报酬。因此，企业应当按照劳动者正常出勤情况下的工资标准支付该期间内的工作报酬。

According to Circular No. 5 issued in 2020, the employer shall pay the employee who is confirmed or suspected to have a disease of 2019-nCoV, has close contact with the patients who getting disease of 2019-nCoV during the quarantine treatment or medical observation, can't perform his duties due to the quarantine measures or prevented by other emergency measures implemented by the government, the employer should pay the employee as if who had performed his/her normal duties.

我们倾向认为，在此情形下，企业应当向员工正常发放包括基本工资以及在正常出勤情况下即可获得固定奖金和补贴（津贴）。若员工的奖金、补贴或津贴与该员工或企业的工作业绩相挂钩，则在遭遇企业业绩不佳或停工、停产的情形下，员工确无任何业绩，企业向员工正常发放的工资中应不包括相关奖金或补贴津贴。我们建议企业在工资发放上灵活操作，向员工做好解释沟通和达成一致，避免在此产生纠纷。

From our point of view, under these circumstances, the employer shall pay employee basic salary, as well as the fixed amount bonus and subsidy/allowance in his/her salary that he/she is entitled to as if he/she had performed his duties as normal. However, where the amount of bonus and subsidy/allowance is related to and determined upon the performance of the employee or the employer/enterprise, the relevant bonus or subsidy/allowance shall be deducted from salary provided that the employee has not provided any work if the enterprise is confronted with difficulties and does not operate well or has stopped operation or production. We recommend that employers flexibly deal with the salary distribution, by explaining and communicating with employees and reach consensus, to avoid disputes arising thereof.

3、员工确诊新型肺炎后的工资报酬处理

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Issue on wages and remuneration of employees infected by novel pneumonia

根据人社部发〔2020〕8号规定，隔离期结束后，对仍需停止工作进行治疗的职工，按医疗期有关规定支付工资。我们倾向认为，职工被隔离期间被确诊为新型冠状病毒感染的肺炎患者或其他疾病需要治疗时，享受医疗期的有关待遇，企业应支付病假工资或疾病救济费。

Pursuant to Circular No.8 issued in 2020 after the expiration of the quarantine period employees who have to stop working a for medical treatment shall be paid by the standard of prescribed period for medical treatment according to relevant Laws. From our point of view, for employees who are confirmed to have been infected or have other diseases during the period of quarantine and are under medical treatment, employer shall pay them the sick leave payment or disease relief costs during the quarantine observation and medical treatment period.

4、2020年2月10日后，政府或企业要求员工居家隔离期间的工资报酬支付问题

Issue on wages and remuneration to be paid during the period of home quarantine as required by enterprises or government after Feb 10, 2020

根据《传染病防治法》第三十九条规定，企业可以要求在重点疫情地区或途经重点疫情地区的职工暂时不返岗复工，并可要求其在指定场所进行医学隔离观察和采取其他必要的预防措施，职工应依法予以配合。根据上海市卫健委发布的《来沪（返沪）人员健康管理告知书》规定：有相关流行病学史（包括湖北等重点地区旅居史，曾与重点地区发热或呼吸道症状人员有接触史、曾与新型冠状病毒感染的肺炎病例有接触史）的，必须居家或集中隔离观察14天。目前，部分区政府、街道办事处、工业园区等部门，要求返沪人员必须居家隔离观察14天，方才允许返沪人员外出上班，这属于政府要求的隔离期间，企业本应正常支付工资。

According to Article 39 of the Law on the “Infectious Diseases Prevention”, for employees who are in the key epidemic area or travel via the key epidemic areas, the employer is entitled to require them not to return to work currently, and to require them to conduct medical quarantine observation in the designated place and take other necessary preventive measures, which the employees shall comply with Laws and regulations. According to “Notice on Health Management of People Who Return to Shanghai for Work” issued by Shanghai Municipal Public Health Committee, people who are in the key epidemic areas or travel via the key epidemic areas or who have contact with those from key epidemic areas having fever or respiratory symptom or who have contact with those confirmed to have been infected must stay at home or at the designated place for quarantine observation for 14 days. Currently according to the regulations of some district authorities in Shanghai or neighborhood committee offices or industrial zones people who return to Shanghai from other areas must stay at home for quarantine observation for 14 days before they go to work. In this period stipulated by authorities the employer shall pay them as if they had provided normal works.

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2020年2月10日以后，企业出于防控疫情需要，可以安排职工延迟上班或在家自行隔离、远程上班的，企业安排员工在线参与、从事合适的文字材料工作内容，在家工作应视同员工正常出勤，按劳动合同约定的标准支付工资。对不具备在家远程办公条件的企业，可安排优先使用带薪年假、企业自设福利假、综合调剂使用年度内休息日、协商待岗和工资标准，或引导员工办理事假手续。如果职工经治疗后或医学隔离观察期满经确诊无风险的，企业应安排职工返回原工作岗位参加工作。

In consideration of the Prevention and Control of the existing epidemic the employer is entitled to require the employees to postpone their work or stay at home for the quarantine and the observation or remote online work from home or do paper work at home after Feb 10, 2020, under which circumstances the employer shall pay them as if they had provided normal works. The employer who is not equipped for the remote online work from home may have its employees to use the paid welfare leave, or adjust the schedules of its t days off within the year, or arrange employees to take paid annual leave or to direct employees to take some personal leave, or negotiate with employees for the post-waiting and the corresponding wage rate. For those employees who are confirmed not to be infected by 2019-nCoV, upon expiration of medical quarantine and observation, the employer shall arrange them to return to work.

5、员工因交通限制原因，无法按时复工的劳动关系处理和工资支付标准 **Issue on Labor relations and wage standard for employees who fail to return to work on time due to traffic restrictions**

员工因交通限制等防控措施，无法按时返回复工的，应当及时向企业说明情况，并按照企业规章制度规定履行请假手续，企业不能简单地以旷工违纪解除劳动关系，但可以要求员工提供医院的诊疗证明、社区或村委会的书面情况说明或者地区交通限制通知等材料。

When employees are unable to return to work on time due to traffic control or other preventive measures, they should explain the situation to the employer in time, and go through the formalities of applying for leave required by the rules and regulations of the enterprise. In this case the employer is not entitled to terminate the labor contract with the excuse of absenteeism and discipline violation, but it is entitled to request the employee to provide the hospital's diagnosis and medical treatment document, the community or village committee's written supporting statement or regional traffic restrictions notice and other materials.

员工因交通限制不能按时返岗时间较长，或者员工从重点疫情地区回到上海工作地并自行居家观察期间较长的，企业可优先考虑安排在家办公、安排员工带薪年假、企业自设福利假、综合调剂使用年度内休息日、协商待岗和工资标准，或引导员工办理事假手续。

When the employees are unable to return to work as required for a long time due to traffic controls, or the employee returns to work in Shanghai from key epidemic areas and has to

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stay at home for quarantine observation for a long time, the employer may arrange them to work at home, to take paid annual leave, or to take the welfare leave if the employer has such inner policies, , or , or may adjust its day off schedules within the year, or may discuss with the employees for a post-waiting and the corresponding wage rate or direct the employee to take personal leave.

三、企业因新型肺炎疫情导致生产经营困难而停工停产的工资支付标准 **Wage standard to be paid by employer who has to stop production under the influence of coronavirus outbreak**

根据人社厅《关于妥善处理新型冠状病毒感染的肺炎疫情防控期间劳动关系问题的通知》、上海市人社局《关于应对新型冠状病毒感染的肺炎疫情实施支持保障措施的通知》、《上海市企业工资支付办法》第十二条规定，企业因受疫情影响要求职工推迟复工，在一个工资支付周期内的，应按劳动合同规定的标准支付职工工资；企业可根据职工提供的劳动，按双方新约定的标准支付工资，但不得低于本市规定的最低工资标准。符合条件的企业，可按规定享受稳岗补贴。

According to “Circular on the Proper Handling of Labor Relation Issues during the Prevention and Control of Pneumonia Outbreak Caused by the Novel Coronavirus Infection, “Circular on the Implementation of Supporting and Protective Measures in Response to Pneumonia Outbreak Caused by the Novel Coronavirus Infection issued by Shanghai Human Resources and Social Security Bureau”, and article 12 of “Measures of Shanghai Municipality for Payment of Wage by Enterprise”, where an employer further postpones the restart of operation after Feb 9, 2020 due to the impact of the epidemic, and such a postponed period falls within the same pay period as the holiday, the employer shall pay the employees at the wage standard stipulated in the labor contract. In other instances, the employer may pay the employee at the wage rate newly agreed by both parties based on the amount of work the employee has done, but employer shall not pay the employees at the wage standard lower than the local minimum wage standard. Some enterprises who meet the required conditions are entitled to apply for government subsidies for their contribution in maintaining staff stability according to regulations.

企业因受疫情影响导致生产经营困难的，可以通过与职工协商一致采取调整薪酬、轮岗轮休、缩短工时等方式稳定工作岗位，尽量不裁员或者少裁员。
When an enterprise affected by the existing epidemic has difficulties in its production and operation, it may discuss with its employees to adjust salary, or arrange work shift, or shorten working hours, or take other measures in order to maintain staff stability and avoid any layoffs or a layoff with a large number.

我们倾向认为，企业因受疫情影响导致生产经营困难的，应属于《劳动合同法》第四十条第三款规定的劳动合同订立时的客观情况发生重大变化，如果职工不能与企业就调整薪酬、轮岗轮休、缩短工时达成一致，企业有权依法解除劳动合同并支付经济补偿和一个月工资的代通知金。

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In our view, the difficulties in the production and the operation faced by the employer due to the impact of the existing epidemic constitutes a major change in the objective situation based on which the labor contract was concluded pursuant to article 40 (3) of *Labor Contract Law*. In the case where two parties cannot reach agreement on adjustment of salary, work shift, shortening of working hours, the employer is entitled to terminate the labor contract legally after notifying the employee in writing 30 days in advance, or pay one extra month salary as well as the economic compensation.

根据《上海市企业工资支付办法》第十条规定，用人单位确因生产经营困难，资金周转受到影响，暂时无法按时支付工资的，经与本单位工会协商一致，可以延期在一个月內支付劳动者工资。延期支付工资的时间应告知全体劳动者，并报主管部门备案，无主管部门的报市或区、县劳动保障行政部门备案。

Pursuant to article 10 of “Measures of Shanghai Municipality for Payment of Wages by Enterprises”, when the employer who is really faced with difficulties in its production and operation are unable to pay salary on time due to insufficient cash flow, it may delay paying salary by one month after reaching consensus with the labor union through consultations. The employer shall notify the employee of the day on which the salary will be paid and report it to the competent department for filing. If there is no competent department, the employer shall report to the administrative department of the municipal or district/county labor and social security for filing.

四、感染新型冠状病毒肺炎有关工伤认定

Issue on the determination of Work-related injury caused by 2019 novel coronavirus infection

根据《因履行工作职责感染新型冠状病毒肺炎的医护及相关工作人员有关保障问题的通知》（人社部函（2020）11号）规定，在新型冠状病毒肺炎预防和救治工作中，医护及相关工作人员因履行工作职责，感染新型冠状病毒肺炎或因感染新型冠状病毒肺炎死亡的，应认定为工伤，依法享受工伤保险待遇。已参加工伤保险的上述工作人员发生的相关费用，由工伤保险基金和单位按工伤保险有关规定支付；未参加工伤保险的，由用人单位按照法定标准支付。

Pursuant to the “Circular on Implementation of Supporting and Protective Measures of the Medical Staff and Related Personnel Infected by 2019-nCoV due to Performance of Their Duties” (Circular No. 11 issued in 2020) issued by the General Office of the Ministry of Human Resources and Social Security, if any of the medical staff and related personnel is infected by 2019-nCoV in performing their work of medical treatment and disease prevention, they should be deemed to be a work-related injury and shall have the right to enjoy the benefits of work-related injury insurance. For those participating in work-related injury insurance, the benefits shall be paid by work-related injury insurance funds and employers pursuant to the relevant Laws and regulations. For those not participating in work-related injury insurance, the benefits shall be paid by the employers at the standard stipulated by relevant Laws and regulations.

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非医护企业指派员工前往重点疫情地区工作而确诊新型冠状病毒肺炎的，可以按“因工外出期间，由于工作原因受到伤害”的情形，向人社部门申请认定为工伤。非医护企业指派员工提供志愿活动中感染疫病或受到其他伤害，可以按“在抢险救灾等维护国家利益、公共利益活动中受到伤害”的情形，向人社部门申请认定工伤。对于员工出差和志愿活动中感染新型冠状病毒肺炎的情形，我们倾向认为该种情形应当认定工伤。

If an employee other than medical staff who is designated by employer to work in the key epidemic areas is infected by 2019-nCoV, he or she may file an application to the administrative department of Labor Security for identification of the work-related injury pursuant to the article 14 (5) of Regulation on Work-Related Injury Insurance (2010 Revision) stipulating that “the employee is injured due to work on work-related travel”. If an employee other than medical staff who is designated by employer to be a volunteer is infected by 2019-nCoV, he or she may file an application to the administrative department of Labor Security for determination of the work-related injury pursuant to the article 15 (2) of Regulation on Work-Related Injury Insurance (2010 Revision) stipulating that “he is injured in an act to protect national interest or public interest such as emergency rescue and disaster relief”. In our view if an employee on work travel or as a volunteer is infected by 2019-nCoV he or she shall probably be determined to have a work-related injury.

非医护企业员工在工作场所内，感染新型冠状病毒肺炎，我们倾向认为原则上不能直接认定为工伤，应作为一般非因工疾病对待。但如果在工作场所、工作时间内，员工感染新型肺炎且在 48 小时内医治无效死亡的，可申请认定为视同工伤。

In our view if an employee other than a medical staff is infected by 2019-nCoV in workplace, he or she should probably be determined to have normal injury rather than work-related injury. However, if an employee other than a medical staff is infected by 2019-nCoV in workplace at worktime and dies immediately or within 48 hours after emergency medical treatment, he or she may file an application to the administrative department of Labor Security for determination of work-related injury.

五、劳动争议纠纷案件受理与办理时限

Labor Dispute Case Acceptance and the Statute of Limitations

根据《关于妥善处理新型冠状病毒感染的肺炎疫情防控期间劳动关系问题的通知》（人社厅发明电〔2020〕5号）第三条规定：

Pursuant to the article 3 of the “Circular on the Proper Handling of Labor Relation Issues during the Prevention and Control of the Pneumonia Outbreak Caused by the Novel Coronavirus Infection” (Circular No. 5 issued in 2020) issued by the General Office of the Ministry of Human Resources and Social Security.

因受疫情影响造成当事人不能在法定仲裁时效期间申请劳动人事争议仲裁的，仲裁时效中止。从中止时效的原因消除之日起，仲裁时效期间继续计算。

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If a party concerned impacted by the epidemic is unable to apply for a labor arbitration within the Statutory arbitration period, the Statutory arbitration period shall be suspended and shall not be continued until the date suspension is eliminated.

因受疫情影响导致劳动人事争议仲裁机构难以按法定时限审理案件的，可相应顺延审理期限。

If the Labor and Personnel Dispute Arbitration Institution impacted by the epidemic is unable to hear a suit within the statute of limitations, the statute of limitations may be extended accordingly.

根据上海目前多个区劳动仲裁部门和上海市高级人民法院发布的通知，争议企业和员工可以向劳动仲裁部门和法院申请延期审理案件，以做好当事人个人的自我隔离和留观排查。

Pursuant to many circulars of the Labor Dispute Arbitration Commissions in different districts of Shanghai and the circular of Shanghai High People's Court any party in labor dispute is entitled to file an application to extend the hearing for the self-quarantine or medical observation.

六、企业复工前后的紧急防护设施和员工信息收集

The Emergency Protective Measures before and after the Work Start & the Collection of Employee's Information

企业应当及时对本单位内的安全防范措施进行全面检查，对于可能在生产、工作中接触传染病病原体的人员，按照《传染病防治法》第六十四条之规定，有关单位应当采取有效的卫生防护措施，并给予适当津贴；对于其他工作人员，鼓励单位和工会共同为职工提供诸如口罩等防护用品。

The employer shall timely conduct a thorough inspection of its safety protective measures in its area. The employer shall take the effective health-protective measures for those who may have a contact with the infectious virus in their works and provide them with a reasonable allowance pursuant to the article 64 of "Infectious Diseases Prevention Law", and is encouraged to, together with its labor union, offer the protective equipment such as the masks to employees.

根据《传染病防治法》第三十一条之规定，任何单位和个人发现传染病病人或者疑似传染病病人时，应当及时向附近的疾病预防控制机构或者医疗机构报告。根据《传染病防治法》第五十四条之规定，卫生行政部门在履行监督检查职责时，有权进入被检查单位和传染病疫情发生现场调查取证，查阅或者复制有关的资料和采集样本。被检查单位应当予以配合，不得拒绝、阻挠。

Pursuant to article 31 of "Infectious Diseases Prevention Law" all entities and individuals shall promptly report to the competent Disease Prevention and Control Institution or medical institution if when they detect an infected person or a person suspected with infection. Pursuant to article 54 of the law mentioned above Administrative Department of Public Health is entitled to enter the entity and site of the epidemic occurrence to investigate,

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and to consult and copy the relevant document and collect the sample in performing its duty. The entity to be inspected shall cooperate with Administrative Department of Public Health without making any obstacle or refusal.

因此，企业基于防控本单位内的疫情传染的需要，企业有权利在必要的限度内了解员工出行信息和健康状况，如员工在春节期间到过的地方、接触的人群、是否发热等，了解过程中应注意做好保密措施。企业在收集员工个人信息的同时，应避免泄露员工个人信息，以免造成新的违法行为。企业应配合卫生行政部门的监督监察，在发现突发传染情况时，第一时间报告卫生行政部门，并提供相应资料。

Therefore, the employer is entitled to collect information about the employees' travel and health condition to the reasonable extent to satisfy its need for prevention and control of the epidemic spread, such as the information regarding the place where the employee has been during the Spring Festival, the people the employee has contact, or whether the employee has a fever. Nevertheless, the employer should take confidential measures to prevent from the illegal disclosing of the information collected. The employer shall cooperate with the Administrative Department of Public Health on supervision and inspection, report to the Administrative Department of Public Health without any delay if the epidemic outbreak occurs and provide the relevant data.

我们建议，企业按照政府部门和医疗机构发布的办公场所疫情防控措施和建议，对办公区域进行适当通风和进行消毒处理等。同时对员工宣传教育，通过微信、邮件等多种方式，积极加强对传染病等方面的知识宣传，教育广大职工积极做好安全防护。

We recommend the employer should ventilate and disinfect its workplace frequently according to the prevention and control measures in handling the existing epidemic issued by the relevant authorities and the medical institutions. In addition, the employer should inform and educate its employee about the knowledge of the existing epidemic and the protective measures in order to protect its employees effectively via using various means such as WeChat, emails, mails, etc.

我们期待以上参考法律指引，对贵公司在疫情防控期间的劳动用工管理带来帮助，如有您任何疑问，欢迎来咨询本所律师。

We hope this guidance is helpful for you to solve employment legal issues during this tough period. If you have any questions, please contact our law firm and our lawyers are happy to reach out.

本参考指引为申浩律师事务所律师原创，感谢全体申浩律师对本文最终成稿共同付出的努力，感谢徐兴民律师作为主撰稿人对本参考指引不断完善更新作出的贡献，感谢申浩外事委员会陈丽梅律师、王明辉律师、徐丽慧律师、杨云虹律师、暨潮春律师、朱申岭律师承担英文版本的翻译、校对工作。本文版权归上海申浩律师事务所所有，转载需经律师事务所许可后，可通过微信转发功能全文无修改之转发，不允许通过复制等方式全部或部分的方式于其他账号中的再次发表。

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如您需要法律意见或其他专家意见，应当向具有相关资格的专业人士寻求专业的法律帮助。