

CHINA REOPENS FOR BUSINESS (AGAIN): AN EMPLOYER'S GUIDE TO COMPLYING WITH PANDEMIC-ERA POLICIES

Insights
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China has been among the strictest countries when it comes to policies aiming to curb the spread of COVID-19. While most countries ditched lockdowns and relaxed quarantine rules after vaccinations became readily available, China has continued to enforce a "zero-COVID" strategy. This approach has led to recurring lockdowns when regions experience rising infections from variants. Most recently, Shanghai and other cities in China spent many weeks in lockdown in response to the contagious omicron variant. As these cities start to reopen from the latest lockdown, businesses will have to contend with the impact of COVID-19 on their operations and employee relations. Through a Q&A presentation, this Insight will discuss eight key topics to help employers that do business in China or employ a Chinese workforce stay compliant with the country's pandemic-era workplace policies.

1. Can you require proof of vaccination or a negative COVID-19 test when an applicant interviews or a new hire onboards?

Yes. As part of China's COVID-19 prevention measures, you can request such information from applicants and new hires. You may ask them to present a health code, travel code, antigen test, or PCR test. Applicants and employees, in turn, are legally obligated to comply with such requests.

2. Can you exclude applicants and new hires from mid- and high-risk areas?

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No. Excluding applicants from medium and high-risk areas from the hiring and recruitment process is considered employment discrimination. You should implement appropriate COVID-19 prevention measures in advance and ensure applicants from medium or high-risk areas meet the requirements.

3. Can you rescind an applicant's offer if they are quarantined or unable to start on time due to a lockdown in their region?

No. While a working relationship has not yet been established with the applicant, the offer letter is binding on the employer. You could be subject to civil liability if you single-handedly rescind the offer. If an applicant cannot start work due to COVID-19 prevention measures, you should discuss available options with the applicant, which may include delaying the start date or working remotely during the quarantine or lockdown period. Until the applicant is actually able to start working, however, you are not obligated to pay the them.

4. Can you extend the probationary period if the worker is under quarantine or resides in a location under lockdown?

Yes, under two conditions: 1) you discuss the matter with the worker; and 2) the prolonged period matches the time the worker is under quarantine or the worker's location is under lockdown. The probationary period may be deemed illegal if you unilaterally or excessively extend it.

5. Can you place a worker on paid holiday or corporate welfare holiday leave if they cannot perform their regular duties or work remotely for COVID-19-related reasons?

Yes. An employer's unilateral arrangement of leave benefits, such as annual paid holidays or corporate welfare holidays, are generally accepted.

6. What payments do you owe a worker during the quarantine or isolation period if they test positive for COVID-19 or have been exposed to COVID-19?

The employer is required to pay the worker their regular salary during the quarantine or isolation period.

7. Is a worker entitled to overtime pay if they are isolated or subject to a blockage at work and unable to return home after work?

No. The worker is only entitled to their regular pay. Time beyond regular work hours does not constitute overtime unless you have the worker continue working beyond regular hours.

8. What points should you consider when enacting and changing policies due to the impact of COVID-19?

You should consider discussing rule changes with your workers and implementing appropriate notification procedures. You might also submit proposals for comments to the workers' representatives on draft rules or important matters closely related to workers' interests, such as suspension of operations and production, changes in compensation, changes in working conditions and hours, and shift changes. You should also consider taking steps to notify employees through methods such as email, intranet systems, and chat groups.

Conclusion

The COVID-19 pandemic and China's prevention measures have had a significant impact on applicable businesses and their employee relationships. If your organization has employees in China, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [International Practice Group](#) to learn more about China's employment laws and to assess what changes, if any, are needed to bring your organization into compliance. We will continue to monitor the situation and provide updates as warranted, so you should ensure you are signed up for the [Fisher Phillips Insight System](#) to receive the most up-to-date information.

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