

2022 年 4 月

劳动与雇佣

疫情当下，企业如何发放工资

HOW EMPLOYEE SALARY SHALL BE PAID UNDER CURRENT COVID

近期，上海及全国各地爆发新冠疫情，疫情形势严重，大部分公司因政府疫情防控要求而被迫停工停产，公司遭受经济损失不可避免。此外，公司员工因疫情防控政策而无法正常工作，那么，对于因疫情影响而无法上班的员工，在当下疫情防控停工停产期间，公司应当如何发放工资呢？

Recently, the outbreak and spread of Covid in Shanghai and other cities in China made the epidemic situation serious. Most of the companies are forced to suspend operation due to the government lockdown policy, which has inevitably caused economic losses. In addition, employees of the company are not able to work in the office as usual. Now the question is how the company shall pay the employees who are not able to work as usual during the suspension of operation?

人社部相关规定

Relevant Rules promulgated by the Ministry of Human Resources and Social Security of the People's Republic of China ("MOHRSS")

事实上，在 2020 年新冠疫情最初爆发后，人社部就出台了《人力资源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》（人社厅明电[2020]5 号，以下称“通知”）。根据该《通知》，企业停工停产在一个工资支付周期内的，企业应按劳动合同规定的标准支付职工工资。超过一个工资支付周期的，若职工提供了正常劳动，企业支付给职工的工资不得低于当地最低工资标准。职工没有提供正常劳动的，企业应当发放生活费，生活费标准按各省、自治区、直辖市规定的办法执行。

In fact, after initial outbreak of Covid in 2020, MHRSS issued the Notice by the General Office of MOHRSS Concerning Properly Handling Labor Relations during the Prevention

and Control of the Outbreak of Novel Coronavirus Pneumonia (COVID-19) (No.5[2020] of the General Office of the MOHRSS, hereinafter referred to as the "Notice"). According to the Notice, if the suspension of operation of the company is within one salary payment cycle, the company shall pay salary to the employee according to the criteria as agreed in the employment contract. However, if the suspension of operation of the company exceeds one salary payment cycle, in the event the employee has provided normal working service, the company shall pay the employee with salary no less than local minimum salary. In the event the employee does not provide normal working service, the company shall pay living fee, which criteria shall be implemented according to the rules of various provinces, autonomous regions and municipalities directly under the central government.

困惑点

Confused Issue

上述《通知》给疫情防控期间停工停产的公司如何支付员工工资提供了指引。但对于《通知》中提及的“一个工资支付周期”应如何理解的问题，存在较大的分歧，甚至产生了误解。

The Notice above provides general guidance for the company in terms of salary payment during the suspension of operation. However, some dispute has arisen relating to the understanding of "one salary payment cycle", which even has caused confusion.

一种观点认为，“一个工资支付周期”应自停工停产之日起至该停工停产当月的自然月结束之日止进行计算，即停工停产的当月处于“一个工资支付周期”，下月属于“超过一个工资支付周期”。按照这种理解，例如，2022年3月15日为停工停产的首日，则2022年3月份为“一个工资支付周期”，3月份工资应当按照正常标准发放，2022年4月份，如果持续处于停工停产状态的，则公司可以低于正常标准发放工资。

Some people are of the opinion that "one salary payment cycle" shall start from the first day of suspension of operation until the end of the calendar month the suspension of operation started, namely, the month the suspension of operation started shall be defined as one salary payment cycle, and the next month shall be the one beyond "one salary payment cycle". According to this understanding, for instance, if March 15, 2022 is the first day of suspension of operation, then the month of March 2022 shall be defined as "one salary payment cycle" and the salary for March shall be paid as usual. If the suspension of operation continues in April 2022, the company is allowed to pay salary less than the normal salary.

另一种观点认为，“一个工资支付周期”的长度应从停工停产之日起计算一个月，即便跨越了停工停产的当月。按照这种理解，例如，2022年3月15日为停工停产的首日，则“一个工资支付周期”应当自2022年3月15日开始，至2022年4月14日结束。在此期间，公司应当按照正常标准发放工资。

However, another opinion insists that the length of "one salary payment cycle" shall be one month starting from the first day of suspension of operation, even beyond the month the

suspension of operation started. According to this understanding, for instance, if March 15, 2022 is the first day of suspension of operation, then “one salary payment cycle” shall start from March 15, 2022 until April 14, 2022, and during this period, the company shall pay normal salary as usual.

正确的理解和做法

Correct Understanding and Practice

我们结合自 2020 年以来相关法院案例，特别是 2020 年人力资源社会保障部与最高人民法院联合发布的劳动人事争议典型案例，对如何理解“一个工资支付周期”的问题给出了分析。

In this regard, we have reviewed relevant court cases since 2020, particularly the typical labor dispute cases jointly announced by MOHRSS and the Supreme People’s Court in 2020, which gives analysis on the understanding of “one salary payment cycle”.

比较而言，上述第二种观点是符合立法本意的。

By comparison, the second opinion above is in line with the purpose of legislation.

需要指出的是，如果停工停产在一个工资支付周期内不是连续的，也就是停工停产是断断续续的，但是在一个工资支付周期内，无论具体停工停产天数，均应当按照正常工资标准发放。

It should be pointed out that if the suspension of operation is not a continuous one within one salary payment cycle, which means the suspension of operation is intermittent, whatever the number of days of suspension within one salary payment cycle, the salary thereof shall be paid as usual.

超过一个工资支付周期后，按照何种标准发放工资

How the salary shall be paid beyond one salary payment cycle

在一个工资支付周期后，如果公司继续处于停工停产，则工资的发放有以下几种情况：

If the suspension of operation continues beyond one salary payment cycle, then the scenarios in terms of payment of salary may include:

(a) 如果公司在停工停产期间没有安排员工提供劳动，公司可以仅发放生活费。生活费的标准，在上海地区，是按照最低工资（注：2021 年最低工资标准为人民币 2590 元）的 80% 计算的，即人民币 2590*80%=2072 元；

(a) If the company does not assign any work tasks to the employee during the suspension of operation, the company can pay living fee only. The amount of living fee in Shanghai is equivalent to 80% of the minimum salary (the minimum salary in Shanghai in 2021 is RMB 2590), namely, RMB 2590*80%=2072;

(b) 如果公司在停工停产期间, 根据员工岗位, 可以安排居家办公的, 则公司可以根据其实际提供工作时间来计算并发放工资 (例如, 参照日工资或小时工资来计算工资), 但最低不得低于最低工资标准;

(b) During the suspension of operation, if working from home can be arranged according to the position of the employee, the company is allowed to pay salary according to his/her actual working time by reference to the daily salary or hourly salary, but in any event, no less than the minimum salary.

(c) 无论上述 (a) 或 (b), 公司仍然需要在停工停产期间支付员工的社保和公积金。

(c) Either in scenario (a) or (b), the social insurance and housing fund of the employees shall still be paid by the company during the suspension of operation.

本文意在向客户和朋友通报有关中国法律方面的动态和信息，不构成本所的任何法律意见或建议。如您对本文有任何问题，请联系：

This article is published solely for the interest of friends and clients and should not be relied upon as the legal advice of any kind from us. Should you have any questions about this article, please contact us via:



陈祥龙，执行合伙人

Erex Chen, Managing Partner

Tel: +86 21 68556511

Email: erexchen@mylinklaw.com