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## Telework during the COVID pandemic

The COVID pandemic forced the adoption of telework and sparked a nationwide focus on telework as an important tool for safety and efficiently delivering mission-critical services. Increasing employees are forced to work at home, especially when the workplace closures are mandated.

The opinions<sup>1</sup> of Ministry of Human Resources and Social Security published in February 2020 legalized the teleworking method, one of the opinions is to suggest the enterprises arranging the employees to work at home and complete the work assignments by flexible working methods via telephone and network.

Let us have a look at a judicial case about teleworking.

### Case presentation:

Mr. Yang is an engineer of a technology company. Due to the epidemic, Mr. Yang has been working remotely from home since he resumed work at the end of February 2020. During this period, Mr. Yang has been communicating with his colleagues about work matters through a designated work software.

In order to ensure work efficiency, the employer emphasized that any employee who took more than half an hour to respond to work messages on the work software during working hours would be considered absent from work and would receive a written warning; two written warnings would lead to dismissal.

On several occasions between February and April 2020, Mr. Yang failed to respond to work messages in a timely manner, sometimes even at intervals of several days. The employer issued three written warnings to Mr. Yang, but he still did not comply with the employer's management rules. The employer eventually terminated Mr. Yang's labor contract on the grounds that he had committed a serious violation of labor discipline.

Mr Yang took his employer to court, requesting that the judge confirmed the illegality of his dismissal and imposed the payment of economic compensation.

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<sup>1</sup> Opinions on Stabilizing Employment Relationship during the Period for Prevention and Control of the COVID to Support Enterprises in Resuming Work and Production

## **The judge's ruling:**

The court was of the view that

- a) The current labor law provided that the employees should complete their work tasks and observe labor discipline and professional ethics. This provision was a basic requirement for employees, even in cases where the rules and regulations were not clearly stipulated and the labor contract was not explicitly agreed upon. The employer was entitled to terminate the labor contract with the employee in accordance with the aforementioned provisions if the employee has committed serious violations of labor discipline or professional ethics.
- b) The epidemic led to changes in the employer's management style including the adjustment from office working to teleworking from home. The employee had the obligation to accept such adjustments. In this case, Mr. Yang was subject to the management rules of the employer during his teleworking from home. However, the evidence in his case showed that during the teleworking period Mr. Yang did not respond to the employer's work messages for several times and within a long period of time, which was in violation of the fundamental labor obligations of the employees. Even, after several warnings from his employer, Mr. Yang still failed to comply with the employer's management rules and to perform his duties diligently. Thus, Mr. Yang's behaviors has been a serious violation of labor discipline as well as professional ethics.

The judge finally ruled that the employer's unilateral termination of labor relationship with Mr. Yang was reasonable and legitimate.

## **Comments from DS Avocats:**

Clearly, there are many disadvantages to teleworking, such as:

- The employees' home situation is not conducive for work;
- Isolation and lack of relationships among coworkers. Remote work makes it more difficult for the employees to feel connected to and involved with daily company happening;
- Decreased work and life balance;
- Unstable internet access

The above judicial case is about violation of labor disciplines by the employee in the aspect of teleworking attendance. However in fact, there are many legal matters involved in the teleworking that the employer should be aware of. Below are some legal tips and guidance to consider when switching your employees to telework, especially when this decision is imposed by local government authorities.

### **1- Formulate special rules for teleworking from home**

#### 1) Formulate special attendance policy

This policy should contain the following contents:

- Which online attendance tools will be applied;
- The employees are required to register in the attendance tool on and off duty (such requirement could avoid the unnecessary overtime payment claims);
- Specify that the employer may proceed random check of attendance and any delay of response over a certain period of time will lead to disciplinary punishment;
- Specify the consequences in case the employees fail to comply with this attendance policy;
- The enterprise has the sole discretion to unilaterally cancel or adjust the teleworking method

## 2) Formulate teleworking procedure

This procedure should contain the following contents:

- Request the employees to formulate daily work schedules and set up daily targets;
- Specify that the employees shall make report on a daily basis to the line manager;
- Some rules such dress code during meetings, reminder for safe work at home (see details in *Point 4*)
- Organize online regular internal meetings to keep every employee alert;
- Set up performance evaluation approach;
- Consequences in case the employees fail to comply with this teleworking procedure, such as violation of dress code may be subject to an oral warning

As these rules concern the fundamental interests of the employees, we advise you, in accordance with the provisions of Article 4 of the *Labour Contract Law* of the People's Republic of China, to seek the opinion of the employees before its publication, using the same democratic procedure as that applicable to the company's internal regulations.

## **2- Ensure good operation of online working tools such as videoconferencing, and ensure the access to the Internet**

### **3- Maintain confidentiality of information**

To ensure the confidentiality of the company's business, financial and/or technical information, employees should be reminded to use their work email as a priority for day-to-day communication and document transmission, and to avoid sending sensitive documents/information via instant messaging systems such as WeChat and QQ whenever possible.

### **4- Work-related injury prevention and disposition**

An accident occurring at the place where teleworking is carried out during the exercise of the professional activity of the employee could also be a work-related injury. As such, the employer should do as follows:

- Remind/notify the employees by written form that they should keep their workplace safe;
- Learn as much as you possibly can about the employees' working place;
- Make sure that the employees register in the attendance check tool on and off duty on time; If any abnormal, enquiry about the reason as soon as possible by written form;
- Launch necessary investigation in the event of a work-related injury and apply for identification of work-related injury as soon as possible

### **5- Apply for special working hours' system for the working positions satisfying the stipulated conditions in order to reduce the overtime payment claims**

Special working hours' system includes (a) flexible working hours' system especially applicable to the executive officers and sales employees and (b) comprehensive working hours' system especially applicable to the positions with low and high seasons.

## **6- Organize collective activities in order to avoid the psychological problems of the employees**

The use of well-defined and framed telework is intended to improve employee performance and commitment, as well as efficiency and to support the company's results.

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