

How to Identify the Salary Payment Cycle under Suspension of Production and Operation?



CHINA

The epidemic appears to have rebounded in China since 2022, and starting from Shanghai and Shenzhen in March, several cities have implemented the lockdown measure more or less in order to control the spread of the virus. As a result, many enterprises suffered the suspension of production and operation, raising the question about how to pay the salary to the employees during such suspension period.

According to Article 12 of *Notice on Issuing the Tentative Provisions on Wage Payments*¹, where an employer ceases its operation or production for reasons not distributable to the employees, the employer shall pay the employees the salary as agreed in the labor contract within the first salary payment cycle. The employer shall pay the salary no lower than the local minimum salary standard to the employees who have provided works since the second salary payment cycle, and pay the living fees to the employees who do not work according to the relevant State's and local rules².

Hence, it is important to identify the "salary payment cycle under the suspension of production and operation" ("Payment Cycle") so as to avoid any illegal underpayment of the salaries during the first Payment Cycle.

In practice, the understanding on the calculation of the Payment Cycle can be concluded as the following two opinions:

Opinion 1: The Payment Cycle refers to the working period covered by the monthly salary, and the first Payment Cycle starts from the date of the suspension of the production and operation to the last day under the closest salary calculation cycle. For example, where the employer suffers the suspension of production and operation on 5th of January and the usual salary calculation cycle is from the first day to the end of each calendar month, then the first Payment Cycle should be from 5th January to 31st January.

Opinion 2: The Payment Cycle refers to one complete month, starting from the date of the suspension of the production and operation and lasts for 30 days. For example, where the employer suspends its production and operation on 5th of January, then the first Payment Cycle should be from 5th of January to 4th of February.

TYPICAL CASE:

The Ministry of Human Resource and Social Security and the Supreme People's Court jointly published the *First Batch of Typical Cases of Labor and Personnel Disputes* on July 10, 2020, which provided the answer on the understanding of Payment Cycle.

Company X (the "Company") pays the monthly salaries to its employees on every 15th for their work provided from the 10th of last month to 9th of the month.

The Company ceased its operation and production on February 3rd, 2020 due to the outbreak of Covid-19 and finally resumed the business at the end of February. It sent an online notice after its back to normal, informing that the salaries of the employees who

1. Promulgated by the Ministry of Labor and effective as of January 1, 1995.

2. For more information on suspension of the production and operation, please refer to our previous newsletter:

https://www.dsavocats.com/mailling/Asia%20News/DS_Temporary%20lay-off%20EN.pdf



neither work remotely nor resume to work would be paid based on the national provisions regarding suspension of operation and production.

The Employee, Mr. Zhang, returned to his hometown before the Spring Festival. He did not come back to his position after the receipt of the Company's notice. Thus, the Company paid him the normal salary for the period from February 3rd to February 9th, and started to pay him the living fees from February 10th.

The Employee terminated the labor contract on the grounds that the Company failed to pay the full salary for the period from February 10th to March 2nd, 2020 and claimed for the economic compensation by filing the labor arbitration.

To the Company's understanding, the first Payment Cycle shall be from February 3rd to February 9th, and it entered into the second Payment Cycle since February 10th. Thus, it was lawful to pay the living fees from February 10th.

The parties finally reached the settlement under the arbitrator's mediation, according to which, the Company made up the supplementary payment for the period from February 10th to March 2nd, Mr. ZHANG withdrew his arbitration application and resumed to work at the Company.

Opinion of the arbitration tribunal:

The first Payment Cycle in actual is a buffer period for the employers and the employees to overcome the difficulties in the production and operation. The spirit of legislation is to ensure that all employees, irrespective of their employer's internal practices, continue to receive their full salary during a given period of time, which should be the same for everyone. However, if the calculation of the first Payment Cycle is linked to the calculation of the salary cycle, this will lead to disparities in treatment between employees of different companies facing the same production and operational difficulties, but with different salary calculation cycle.

In this particular case, the first Payment Cycle shall start from February 3rd, when the Company suspended its production and operation, and ended on March 2nd after a complete period of 30 days. The second Payment Cycle from March 3rd. Therefore, the arbitration tribunal stands on Opinion 2.

DS COMMENTS:

We agree with the opinions of the arbitration tribunal, where the employer suffers the suspension of production and operation, the employees' entitlement on the full-month salary for the first Payment Cycle should be ensured. Such interpretation is in line with the spirit of relevant legal provisions. And such calculation impliedly encourages both employees and employers to overcome the difficulties together in the business and promote the social harmony.



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