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[National] COVID-19 and Labor Law-New Rules as from January 8, 2023(Second part)

With the implementation of the announcement and notice promulgated by the National Health Commission and the State Council respectively (“**Announcement and Notice**”) on December 26, 2022, almost all of the policies on epidemic control have been lifted by the Chinese government, the business in China is getting into recovery and the life is being back to normal.

Following our Newsletter dated January 6, 2023, we hereby release the second set of the frequently asked questions and answers in relation to the labor issues that may arise after the change of epidemic policies.

1. Q: Whether the employer can end the labor contract with the employee who is infected with COVID-19 on the grounds of the expiration of the labor contract?

A: According to the Announcement and Notice, as all the quarantine measures (including home quarantine and centralized quarantine) have been cancelled by the government, the quarantine period no longer exists. Therefore, according to the relevant legal provisions, the labor contract of the employee who takes sick leave within his statutory medical period due to COVID-19 infection can be extended. For the employee who is not taking sick leave within the statutory medical period, the labor contract can be ended by the employer upon its expiration.

2. Q: Whether the employee can refuse to work in the office due to the concern of being infected?

A: As the infectious disease prevention and control management against the COVID-19 has been downgraded from Class A to Class B, neither the quarantine measures nor the concept of close contact exists now. As a result, it is groundless for the employee to refuse to work in the office only due to his/her personal concern of being infected with COVID-19 virus. In addition, the employer can take some disinfection and ventilation measures in order to provide safe working environment to the employees.

3. Q: If the employee refuses to come to work by the reason of not being recovered for long time, how could the employer deal with the case?

- A:**
- The employer could request the employee to provide the proofs, such as medical records and PCR test results in order to further verify the situation.
 - If the employee fails to provide medical records or any evidence to prove that he is unable to work, the employer can require the employee to be back to the work in accordance with its internal rules.

4. Q: If the employee provides the false test result, how could the employer deal with the case?

A: In practice, it is common that the employer approves the employee's sick leave application based on a PCR test result or the antigen test result. As the positive antigen test result is easy to be obtained, the employee may provide false test result in order to obtain the sick leaves. In such a case, it can be considered as the employee's dishonestly behavior and the employer may impose relevant punishments as provided in its internal rules.

5. Q: Whether the employer can arrange the employee infected with COVID-19 to take annual leaves?

A: In the situation where the employee is infected with COVID-19 but does not wish to apply for sick leave, according to the relevant regulations, the employer can arrange such employee to take annual leaves based on the specific situation and the employee's willing. Nevertheless, the final decision shall be made by the employer.