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## Money During the Post-Epidemic Period in China

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As of the end of March, cases of COVID-19 have been cleared in nearly 300 cities of China, and the emergency response level has been reduced. In many industries the rate of resumption of work has exceeded 95%. Enterprises that have not resumed work are also waiting for the opportunity to do so. Although the epidemic is effectively controlled in China, the huge impact of the epidemic situation on the survival and development of enterprises has not been completely eliminated. While the enterprises are trying to reduce cost and increase efficiency, the "problem of money" can easily lead to labor dispute. From the perspective of legal compliance, River Delta Law Firm intends, through comparative study of judicial practice in various regions, to provide a practical reference for enterprises to sort out the "money-related issues" from shutdown to resumption to avoid legal risks.

### **1. Problems before work resumption: how to pay the wages during the shutdown**

According to the "Notice Properly Handling Labor Relation Issues during the Period for Prevention and Control of the Novel Coronavirus-infected Pneumonia Epidemic" issued by the General Office of the Ministry of Human Resources and Social Security (hereinafter referred to as No. 5 Notice): "...where an enterprise ceases operation or ceases production in a wage payment period, the enterprise shall pay the wages of laborers in accordance with the standards stipulated in the labor contracts. Where such situation continues for more than one wage payment period: if laborers have worked as normal, the wage paid by the enterprise shall not be less than the local minimum wage standard; and if the laborers have not worked, the enterprise shall pay laborers living expenses..."

Many enterprises have ceased production for a period of time before the resumption of work. They are facing the issue of the payment of wages and living expenses during the shutdown. Due to the large differences in the determination and application of wage payment cycles and living expenses standards, companies need to be paying special attention to:

#### **(1.1) Determination of wage payment cycle**

How to determine "wage payment cycle after shutdown"? At present, there are no clear legal provisions, and there are different understandings when applied in various locations. There are three main opinions:

**Opinion 1:** the cycle is the calendar month when the production stopped, and the second payment cycle will start from the 1st of the following month;

**Opinion 2:** the cycle is determined according to the actual wage calculation period of the enterprise. If the wage calculation period is from the 22 of the previous month to the 21 of this month and the enterprise stop working on February 10, it will enter the second payment cycle from February 22;

**Opinion 3:** the cycle is calculated from the date of the shutdown, and the cycle length is fixed in accordance with the original agreement between the enterprise and the employees, usually a month, but also a week, day, or hour.

Judging from the past judicial practice, the above three methods are applicable, some selected cases for reference:

<b>Opinion 1</b>		
<b>The calendar month when the production ceased is a payment cycle</b>		
<b>Location</b>	<b>Document</b>	<b>Overview</b>
Beijing	(2019) 京 03 民终 15650 号 No. 15650 [2019], Final, Civil Division, Intermediate III, Beijing	After the withdrawal of the "Chinese Food Carnival on the Tip of the Tongue" on October 12, 2018, Chen did not provide labor to the company, but it was caused by the suspension of the company. <b>Therefore, according to law, the company should pay Chen's salary difference of RMB 56,166.30 from August 1, 2018, to December 14, 2018.</b> (18,000 * 3 months + (2120 * 70%) + (2120 * 70% / 21.75 * 10 days)).
Guangxi Province, Bai Se	(2016) 桂 10 民终 1808 号 No. 1808 [2019], Final, Civil Division, Intermediate, Bai Se, Guangxi	As the plaintiff verbally agreed on February 25, 2015, when the defendant was hired as his employee, the payment period should be from the 11th of the previous month to the 11th of next month, i.e., the period for monthly pay period (...) <b>The plaintiff ceased operations on August 18, 2015</b> , due to arrears of rent (...) According to national regulations, 80% of the minimum wage for workers should be paid from <b>September 1, 2015, to 25 December 2015</b> , with a total of four pay periods.
<b>Opinion 2</b>		
<b>From the date the production ceased to the end of the current payment cycle</b>		
Jiangsu Province Nanjing	(2017) 苏 01 民终 5188 号 No. 5188 [2017], Final, Civil Division, Intermediate, Nanjing, Jiangsu	<b>...The salary payment period is the calendar month...</b> On July 27, 2016, Liu was notified to stop working the next day, but it was not caused by Liu, thus Liu's salary should be paid for the month until July 31 for an amount of RMB 10,000. After that period, because Liu did not provide labor, the company should pay Liu's living expenses from August 1 to

		<p>September 13, 2016, for an amount of RMB 2001.93.</p> <p><math>(1770 + (1770 / 21.75 \text{ days} \times 9 \text{ days})) \times 80\%</math> There is no basis for Liu's claim that his normal salary should be paid until August 27, 2016, which is not supported.</p>
Tianjin	<p>(2013) 二中民一终字第 0920 号</p> <p>No. 0920 [2013], Final, Civil Division I, Intermediate II, Tianjin</p>	<p>The court of the first instance found that the <b>defendant closed the company door on February 16, 2012</b>, and the plaintiff was unable to perform his duties(...) 2. The salary <b>payment period of the defendant is a calendar month</b> (1-30 days per month, one cycle), monthly pay around 10 days...</p> <p>The Court believes that: in addition to the defendant paying the plaintiff's salary of RMB 15,855 in a salary cycle of February 2012, according to the document of the Tianjin Municipal Human Resources and Social Security Administration, "<i>Notice on Adjusting the Minimum Wage Standard in Tianjin</i>", from April 2011 to April 2012, it was RMB 1160 per month, and April 2012 was adjusted to RMB 1310 per month. <b>The defendant shall pay the plaintiff a salary of RMB 1,160 in March 2012 and a salary of RMB 22,270 in April 2012 to August 2013 (RMB 1310 x 17 months).</b></p>
<p style="text-align: center;"><b>Opinion 3</b></p> <p style="text-align: center;"><b>One month from the date of the shutdown</b> (according to the agreement can also be week, day, hour)</p>		
Guangdong Province Guangzhou	<p>(2019)粤 01 民终 23083 号</p> <p>No. 23083 [2019], Final, Civil Division, Intermediate, Guangzhou, Guangdong</p>	<p><b>Hou began holiday on November 26, 2018.</b> According to Article 39 of the "<i>Guangdong Province Wage Payment Regulations</i>", from November 26 to December 25, 2018, the company should pay RMB 10,170 according to normal working hours and <b>from December 26, 2018, Hou's living expenses will be paid according to the standard of RMB 1680.</b> The company has paid Hou Zhiheng a salary of RMB 8475 and</p>

		December 2018 from December 1 to 25 according to the above salary standard. The living expenses after December 26, RMB 280, in compliance with the law, will be confirmed by this court.
Chongqing	(2017) 渝 0109 民初 4674 号 No. 4674 [2017], First, Civil Division, Chongqing	<b>The plaintiff stated that it was suspended due to the defendant's reasons and that he worked normally until November 3, 2015 (...)</b> Therefore, the salary of the plaintiff from November 4, 2015, to December 3, 2015, should be RMB 12,000. If the unit stops work or production and is not because of a laborer, and the worker does not provide normal labor, the court determines the laborer's wage standard by reference to 75% of the minimum wage standard during the unit period of shutdown. The salary <b>from December 4, 2015, to April 13, 2017</b> , should be RMB 18,202.50s...
Shanghai Pudong New District	(2010) 浦民一 (民) 初 字第 15228 号 No. 15228 [2010], First, Civil Division I, Pudong,	The plaintiff said: (...) the plaintiff's salary payment cycle was from the previous month's 26 <sup>th</sup> to the 25 <sup>th</sup> of this month. The plaintiff paid the defendant according to law with the normal salary from January 21 <sup>st</sup> to January 25 <sup>th</sup> in January 2009. The period from January 26 to February 25 is the second salary payment cycle after the suspension of production... The Court considers: (...) in this case, <b>the plaintiff arranged for the defendant to stop working from January 21 to February 25, 2009, and should pay the defendant's salary from January 21 to February 20, 2009, in accordance with the original salary standard...</b>

At present, the mainstream view in judicial practice in Shanghai is that “a wage payment cycle” should be calculated from the date of the shutdown. If the enterprise is affected by the epidemic and has no ability to pay wages, it can negotiate with the trade union or employees’ representatives to postpone payment to reduce the pressure on cashflow. The length of the extension is determined by the labor administrative departments of the provinces, autonomous regions, and municipalities directly under

the Central Government according to local conditions. For example, the “*Method on the Salary Payment by Enterprises in Shanghai*” stipulates that, “*After consultation with the labor union or employees’ representatives of the enterprise, it may be possible to postpone the salary payment within one month, and all laborers shall be notified of the time of the deferred payment.*” The “*Regulations on the Protection of Workers' Rights and Interests in Chongqing*” stipulates, “*...it may postpone the salary payment with the prior written consent of the workers or the trade union of the unit 5 days before the agreed salary payment date and if the extension is more than one month, the Workers’ Congress shall also be requested to agree, but the maximum shall not exceed two months.*”

## 1.2 Payment standards for wages and living expenses

### 1.2.1 Wage payment standard in the first payment cycle

According to the No. 5 Notice, if an enterprise ceases production within one payment cycle, it shall pay wages to employees in accordance with the standards stipulated in the labor contract. However, in practice, sometime the standard of wages has not been stipulated in the labor contract and the actual wages are higher than agreed in the contract. By example, floating performance bonus is a part of the wage. This may confuse companies on how to determine wage standards during the shutdown. On one hand, they wish to save on labor costs as much as possible; on the other hand, they worry that giving less will bring legal risks.

Retrieving local cases, if the employee’s actual monthly salary is a fixed amount, and is higher than the wage agreed in the labor contract. Most courts will refer to the actual amount to determine the wage standard for the first wage payment cycle after shutdown. However, there are certain differences whether to issue performance pay and other subsidies:

Opinion 1		
The wage standard for the first wage payment cycle includes performance wages, other subsidies, etc.		
Location	Document	Description
Chongqing	(2017)渝0109民 初4674号 No. 4674 [2017], First, Civil Division, Chongqing	Party B's monthly salary (which, if not specifically stated, is due before tax) is RMB 3000. Party B's salary is composed of basic (fixed) salary, post salary and performance salary. The basic salary is RMB 800/month, and the post salary and performance salary is RMB 2200/month. The performance salary is verified based on the operation of Party A and the evaluation of the performance of Party B... The court determined that the plaintiff's salary was RMB 12,000/month... Therefore, the plaintiff's salary from November 4, 2015, to December 3, 2015, should be RMB 12,000.

Guangdong Province Guangzhou	(2019) 粤 01 民终 905 号 No. 905 [2019], Final, Civil Division, Intermediate I, Guangzhou, Guangdong	From October 26, 2016, Zhang's position was adjusted to the company's deputy general manager and vice president, with a salary of RMB 25,000 per month, including a <b>fixed salary of RMB 18,400, a performance salary of 4,600 yuan, and a post subsidy of RMB 2,000</b> (...) On February 1, 2018, the jewelry company suddenly informed all employees that the jewelry company will stop production and work on February 10, 2018 (...). <b>The jewelry company should pay Zhang's February 2018 according to the standard of RMB 25,000</b> , i.e., the difference in salary due to Zhang in February 2018 is RMB 5285.71 (25,000 – 19,714.29).
Shandong Province Yantai	(2018) 鲁 06 民终 2109 号 No. 2109 [2018], Final, Civil Division, Intermediate VI, Yantai, Shandong	The contract stipulates: "Party B's basic salary is RMB 1500/month, performance salary is RMB 2054/month, overtime salary is RMB 1296/month for a total of RMB 4850/month" (...) At the end of November 2015, Dayang Company stopped production for some reason. The limited company should pay Shi Junguo a labor remuneration of RMB 41,360 from October 2015 to April 2017. Calculation method: (4850/month * 3 months) + (1600/month * 5 months) + (1710/month * 11 months)
<b>Opinion 2</b> <b>The first payment cycle when business stopped does not include performance wages, other subsidies, etc.</b>		
Guangdong Province Jiangmen	(2017) 粤 07 民终 874 No. 874 [2017], Final, Civil Division, Intermediate VII, Jiangmen, Guangdong	Jiang's <b>May 2016</b> payroll included income category "performance salary" for RMB 510.16, "living allowance" for RMB 123, <b>"payable salary" for RMB 2191.97</b> (...) Helplessly forced to stop production on May 17, 2016 (...) the two parties agreed in the labor contract that the normal working hour salary is RMB 1130 per month. Later the company issued a monthly "skills salary based on attendance accounting" of RMB 1810, so it can be determined that both parties change their normal work hours wage to RMB 1810 per month, <b>and the wage during this severing period should be recognized as RMB 1810...</b>

Beijing	(2019) 京 03 民终 9125 号 No. 9125 [2019], Final, Civil Division, Intermediate III, Beijing	Since Liu Shengwen has been waiting for work from January to June 2018, the performance wages agreed in the labor contracts of the two parties should not be paid, but because Hengkun Company agreed to the arbitration and the results of the first-instance trial, the Court does not object to the payment of performance pay... Regarding the wage difference, job title subsidy, seniority subsidy, transportation subsidy, communication subsidy, and labor protection fee, because Liu Shengwen is waiting due to Hengkun's suspension of work from January to June 2018, subsidies, transportation subsidies, communication subsidies and labor protection fees should not be paid.
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If the company stipulates the conditions for the payment of performance wages, bonuses, and allowances in the regulations or labor contract, and is related to performance, evaluation, or attendance and the employee does not provide labor during the shutdown nor actual attendance; The company has sufficient reasons and conditions to not pay. However, if a company issues a fixed amount of "performance bonus" to employees every month, it is very likely to be recognized as an integral part of the employee's fixed income. If it is not issued, it will face certain legal risks.

In addition, overtime wages are the remuneration received by workers for providing additional work, so **under normal circumstances, overtime pay is not included in the wages of the first wage payment cycle after the shutdown**. However, there are also very rare cases: No. 2109 [2018], Final, Civil Division, Intermediate VI, Yantai, Shandong, a fixed amount of monthly overtime wages is stipulated in the labor contract, which was also included in the calculation of wages for suspension of production and suspension of work.

### 1.2.2. Standard of living expenses

When the shutdown continues for more than one wage payment period, the new salary payment standard is usually determined through consultation between the two parties, and the living expenses standard varies by location. **If the enterprise is affected by the epidemic and the production is suspended**, it should be paid according to local regulations. The standards of living expenses in some areas are as follows:

Location	Living expenses	Location	Living expenses
Beijing	70% of the local minimum wage	Jiangxi Province*	70% of the local minimum wage

Shanghai	Local minimum wage	Shandong Province	70% of the local minimum wage
Tianjin*	80% of the minimum wage	Qingdao	80% of the local minimum wage
Chongqing*	70% of the local minimum wage	Henan Province*	80% of the local minimum wage
Hebei Province	80% of the local minimum wage	Hubei Province*	80% of the local minimum wage
Shanxi Province	80% of the local minimum wage	Hunan Province	Payment of allowance for stopped operation is no less than the local unemployment insurance standard
Inner Mongolia Autonomous Region	80% of the local minimum wage	Guangdong Province	80% of the local minimum wage
Liaoning Province*	70% of the local minimum wage	Guangxi Autonomous Region	80% of the local minimum wage
Jilin Province	70% of the local minimum wage	Guiyang City	60% of the local minimum wage
Jiangsu Province	80% of the local minimum wage	Sichuan Province*	70% of the local minimum wage
Zhejiang Province	80% of the local minimum wage	Shaanxi Province*	75% of the local minimum wage
Anhui Province	70% of the local minimum wage	Qinghai Province*	70% of the local minimum wage
Fujian Province	After deducting bonuses, overtime wages, and special post allowances, 70% of the employee's own salary or 60% of the unit's average salary; enterprises in difficulty shall pay no less than 60% of the local minimum wage standard.		
Note: The standard of living expenses in Tianjin, Shanxi, Liaoning, Henan, Hubei, Sichuan, Chongqing, Qinghai, and Jiangxi are specific regulations for the prevention and control of the COVID-19 epidemic, and currently only apply to this epidemic prevention.			

Some regions have not made specific regulations on the payment of living expenses, and **local judicial practice may provide some reference:**

Location	Document	Living expenses
Heilongjiang Province	齐齐哈尔：（2019）黑 02 民终 494 号	Local minimum living standard



	<p>佳木斯：（2015）佳民终字第 332 号</p> <p>哈尔滨：（2016）黑 01 民终 5209 号</p> <p>No. 494 [2019], Final, Civil Division, Intermediate, Qiqihaer, Heilongjiang</p> <p>No. 323 [2015], Final, Civil Division, Intermediate, Jiamusi</p> <p>No. 5209 [2016], Final, Civil Division, Intermediate, Harbin, Heilongjiang</p>	
Hainan Province	<p>（2018）琼 97 民终 783 号</p> <p>No. 783 [2018], Final, Civil Division, Intermediate, Hainan</p>	Local minimum wage
Yunnan Province	<p>普洱：（2018）云 08 民终 592 号</p> <p>No. 592 [2018], Final, Civil Division, Intermediate, Pu'er, Yunnan</p>	70% of the local minimum wage
Guizhou Province	<p>遵义：（2015）法民终字第 2700 号</p> <p>No. 2700 [2015], Final, Civil Division, Intermediate, Zunyi, Guizhou</p>	70% of the local minimum wage
Gansu Province	<p>张掖：（2015）张中民终字第 801 号</p>	Local unemployment standards

	No. 801 [2015], Final, Civil Division, Intermediate, Zhangye, Gansu	
	武威：（2019）甘 06 民终 1386 号 No. 1386 [2019], Final, Civil Division, Intermediate, Wuwei, Gansu	60% of the local minimum wage
	白银：（2016）04 民终 15 号 Silver: (2016) 04 Min Jun 15 <sup>th</sup> No. 15 [20186], Final, Civil Division, Intermediate, Baiyin, Gansu	70% of the local minimum wage
	The court considers the local living standard, enterprise, laborers and the actual situation of the case to consider the economic compensation, which is lower than the minimum wage standard and there is no uniform standard.	

In provisions on minimum living security for workers, living expenses usually do not include the social insurance and housing provident fund payable by individuals. Enterprises should refer to the local minimum wage to provide living expenses, but some areas, such as Tianjin and Zhejiang, specify in the policy documents that the individual contribution of the social security provident fund is included in the living expenses or the local minimum wage standard, and the enterprise may deduct the corresponding portion and then issue it.

### 1.3 Payment of wages for special employees

During the shutdown, the payment of wages for special groups such as female employees “in the three periods (pregnancy, confinement and nursing period)” and injured employees is worth noting. This article reviews the judicial practice and related application in various places.

#### 1.3.1 Female employees “in the three periods”

Enterprises should pay wages according to different situations of female employees:

① Before the shutdown, the pregnant female employee who has taken sick leave should continue to be paid for sick leave; if the lactating female employee has taken nursing leave in accordance with local regulations, she should be paid her breastfeeding leave wages in full.

② The maternity allowance for female employees during maternity leave is not affected by the shutdown. According to the "*Special Regulations on Labor Protection of Female Employees*", if they have already participated in maternity insurance, they shall be paid by the maternity insurance fund according to the standard of the average monthly salary of employees in the previous year. Those who do not participate in maternity insurance shall be paid by the employer in accordance with the standard of the salary of the female workers before maternity leave.

③ It is currently controversial whether the enterprises should pay the pregnant and lactating female employees wages and living expenses in accordance with the *Interim Provisions on Wage Payment* if they work as normal before the shutdown. One view holds that the law grants special protection to female employees, making it clear that enterprises cannot reduce female employees wages due to pregnancy, childbirth or breastfeeding, even if an enterprise ceases production or operation. Another view holds that enterprises may pay the relevant treatment according to the Interim Provisions.

In judicial practice, courts in Shanghai, Jiangsu, Shenzhen, Shandong, Henan and other places tend to prefer the second view:

Location	Document	Description
Shanghai	(2015) 金民 四 (民) 初字 第 806 号 No. 806 [2015], First, Civil Division IV, Jinshan	On November 2, 2014, the defendant gave birth at the Obstetrics and Gynecology Hospital affiliated to Fudan University (...). The plaintiff's legal representative announced that the company would close in May 2015 (...). It should pay the monthly salary according to the defendant's original salary standard (...). In view of the fact that the parties have not agreed on the wage standards for the period of closure and that the defendant did not provide labor during that period, <b>the plaintiff shall pay the defendant's monthly wages from June 2014 to October 2014 at the minimum monthly wage in the city...</b>
Jiangsu Province Huaian	(2018) 苏 0812 民初 1585 号 No. 1585 [2018], First, Civil Division, Huaian, Jiangsu	...if it exceeds one wage payment cycle, the wages can be paid based on the labor provided by the laborers according to the new standard agreed by both parties; if the employer does not arrange labor for the laborers, the workers shall be paid living expenses according to not less than 80 percent of the local minimum wage standard.... After the end of the worker's maternity leave, if the employer has not arranged work resulting in the laborers failing to provide normal labor, <b>the employers should pay the laborers' wages normally within the first month after the laborers' maternity leave ends and then pay living expenses according to the standard of RMB 1280/month... (1600 * 80%)</b>

Jiangsu Province Nanjing	(2016) 苏  0104 民初  12072 号 No.12072 [2016], First, Civil Division, Nanjing, Jiangsu	<b>Since August 2016</b> , the plaintiff has been in a state of waiting for work, and is pregnant, (...) so its claim that the defendant should pay the wages of the period of waiting for work according to the standard of RMB 5500/month lacks a legal basis (...) According to relevant regulations, if the employing unit does not suspend work, suspends production, or suspends business due to the reasons of the laborer, within one wage payment cycle of the laborer, it shall be deemed that the laborer provides normal labor to pay its wages. If it exceeds one wage payment cycle, the wages can be paid according to the new standard agreed by the two parties according to the labor provided by the laborers; if the employer does not arrange labor for the laborers, the labor should be paid at the standard living expenses of 80% of the local minimum wage. Therefore, the defendant as an employer should pay the living expenses of <b>RMB 7080 during the period from August to December 2016...</b>
Guangdong Province Shenzhen,	(2013) 深中  法劳终字第 4055 号 No. 4055 [2013], Final, Civil Division, Intermediate, Shenzhen	According to the second paragraph of Article 28 of the " <i>Shenzhen Employee Wage Payment Regulations</i> ", if the employer has partially or totally ceased production or business for more than one month, the employer shall pay not less than 80 percent of the minimum wage of employees who are suspended during the shutdown. Yuan pregnant from February 16, 2012, to April 19, 2012, and the company did not submit evidence to prove that Yuan's failure to attend work was attributable to her. Therefore, the <b>company should pay Yuan RMB 2626.69 for the suspension of work during this period.</b>
Shandong Province Rizhao	(2015) 东民  一初字第 4083 号 No. 4083 [2015], First, Civil Division I, Rizhao, Shandong	On March 27, 2015, the plaintiff gave birth... After December 4, 2014, the plaintiff claimed that the defendant was forced to take a compulsory vacation (...) During this period, the plaintiff did not go to the unit to work normally, <b>so the defendant unit should issue the plaintiff December 5, 2014, the basic living expenses during the holiday period from December 2014 to March 26, 2015</b> , i.e., it shall be paid in accordance with the provisions of Article 31 of the " <i>Shandong Province Enterprise Wage Payment Regulations</i> "...

Henan Province Xinxiang	(2018) 豫 07 民终 1664 号 No. 1644 [2013], Final, Civil Division, Intermediate, Xinxiang, Henan	Li Honglei took maternity leave in June 2016 (...) On January 20, 2017, Sansheng Pharmaceutical Company notified Li Honglei in writing that all employees were on leave (...) Based on the above situation and the fact that Sansheng Pharmaceutical paid Li Honglei's January 2017 salary of RMB 3700 (the year before the Spring Festival), all employees, including Li Honglei, were on leave and not paid their wages for worked hours. Li Honglei also required Sansheng Pharmaceutical Company to pay the salary of February 2017, but at the trial admitted that he only worked for four and a half days in February 2017. At the same time, according to the labor contract in the case "if work is stopped for more than a month Sansheng Pharmaceutical Company shall pay Li Honglei living expenses in accordance with the local unemployment insurance standard", and Sansheng Pharmaceutical Company <b>shall pay Li Honglei the minimum wage of February 2017 RMB 1600 (the minimum monthly wage for the same period in the Xinxiang urban area)</b> , supported by the court of first instance.
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### 1.3.2 Injured employees

During the period of stopped operation and production, enterprises should also provide relevant treatment to employees with work injuries or suffering from occupational illness in strict accordance with the “*Work Injury Insurance Regulations*” and local regulations. This article takes **Shanghai** as an example:

Injured employees on paid leave for medical treatment of work-related injury or occupational illness shall be entitled to their original wages and benefits which are calculated as the average wage of the employees over 12 months before the injury, and shall be paid by the enterprise monthly. The paid leave entitlement of injured employees shall generally not exceed 12 months. If the injured employee is incapable of self-care, the enterprise should also pay him a nursing fee;

Upon determination of the disability grade of an injured employee, the original wages and benefits shall cease. The enterprise pays relevant treatment according to the disability grade, except for the part of the work injury insurance fund:

① For an injured employee with disability grades 1 to 4, the work-related injury insurance fund pays the monthly disability subsidies, and the nursing care subsidy shall be paid according to the grades of self-care disability. Enterprise should pay basic medical insurance for the employee according to law.

② For an injured employee with disability grades 5 and 6, the enterprise shall pay a monthly disability subsidy based on 70% of the monthly wage received by the injured worker in the month preceding the injury for disability grade 5 and 60% for disability grade 6.

The salary refers to the average monthly salary of 12 months before the employee work-related injury or occupational illness. If the salary is higher than 300% of the average salary of the employees in Shanghai, then the calculation is based on 300% of the average salary of the employees in Shanghai; if the salary is lower than 60% of the average salary of the employees in Shanghai, then it is calculated according to 60% of the average salary of the employees in Shanghai. **Therefore, when paying the disability subsidies, the enterprise has no right to lower the standard on the ground of “more than one wage payment cycle”. If the disability subsidies are lower than the minimum wage, it needs to be supplemented.**

③ For an injured employee with disability grades 7 to 10, the employee will not be entitled to disability subsidies, and the enterprise may pay him wages or living expenses during the shutdown according to the “*Interim Provisions on Wage Payment*”.

### 1.3.3 Employees on sick leave

If an employee suffers from an illness or injury not related to work, and has taken sick leave as recommended by the medical institution before the company shuts down. **The company needs to pay the sick leave in full in accordance with the law** and shall pay the living expenses in accordance with the *Interim Provisions on Wage Payment* after the end of the sick leave. In Shanghai, for example, sick leave is treated as follows:

Sick leave pay (6 continuous months or less)	
Less than 2 consecutive years of service	60% of the salary
2 to less than 4 consecutive years of service	70% of the salary
4 to less than 6 consecutive years of service	80% of the salary
6 to less than 8 consecutive years of service	90% of the salary
8 consecutive years of service and above	100% of the salary
Sickness benefit standard (over 6 continuous months)	
Less than 1 year of continuous service	40% of the salary
1 to less than 3 consecutive years of service	50% of the salary
3 consecutive years of service and above	60% of the salary

## 2. Optimization of human resources: calculate economic compensation

Affected by this COVID-19 epidemic, the business model of many companies has changed, rendering some labor contracts unable to be fulfilled, or generating a large number of staff surplus, which requires certain degree of personnel optimization.

If an enterprise terminates a labor contract with an employee in accordance with the provisions of articles 40 and 41 of the Labor Contract Law, it shall pay the employee an economic compensation based on the number of years of service of the employee and on the standard of one month's wage for each completed year of service. The base

number is the average wage of the twelve months before the end of the labor contract. If it is lower than the local minimum wage standard, it shall be calculated according to the local minimum wage standard. If the average monthly wage of the employee in the previous year is more than three times the average monthly wage declared by the local government it shall be calculated according to three times the average monthly wage.

There are two different views in judicial practice on **how to determine the "average salary for the last twelve months"** of employees in response to abnormal situations such as stopped production and shutdowns:

**Opinion 1:** According to the original Ministry of Labor's *Economic Compensation Measures for Violation and Termination of Labor Contracts*: "The wage calculation standard for economic compensation in these Procedures shall refer to the average monthly wage of a laborer under the enterprise's normal production conditions for the 12 months prior to the termination of the contract." This method was repealed on November 24, 2017, but some areas still follow it, with some cases excluding the shutdown period when calculating the economic compensation:

Location	Document	Description
Guangdong Province Shenzhen	(2019) 粤 03 民终 25192 号 No. 25192 [2019], Final, Civil Division, Intermediate, Shenzhen, Guangdong	The Court believes that Article 11 of the " <i>Economic Compensation Measures for Violation and Termination of Labor Contracts</i> " of the Ministry of Labor stipulates that: The wage calculation standard for economic compensation in this method refers to the average wages of workers in the 12 months before the contract is cancelled under normal production conditions. In this case, the suspension of a company for more than four months is an abnormal production situation. <b>The original trial used the average salary of 12 months before the suspension of the company as the basis for calculating the economic compensation, which is in line with the above-mentioned regulations of the Ministry of Labor and is fair and reasonable.</b> This appeal by the company is not supported by this court.
Jilin Province Liaoyuan	(2019) 吉 04 民终 822 号 No. 822 [2019], Final, Civil Division, Intermediate,	In this case, the company issued the "Decision on the Handling of Quality Accidents in the Negative Coating Process" and proposed to terminate the labor contract with Feng. After the two parties negotiated to cancel the labor contract, the company should pay Feng economic compensation. <b>The average salary of Feng in the twelve months before the shutdown</b> was RMB 3332.00. $((3366.73+3354.03+3,735.75+3701.95+3640.03+3448.08+3573.63+3376.99+3321.99+3201.08+1881.56+3382.95)\div 12)$

	Liaoyuan, Jilin	Feng worked in a company for nearly four years before the shutdown, and the company should pay RMB 13,328.00 for economic compensation. (3332.00 × 4)
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**Opinion 2:** Do not distinguish between the shutdown period and the normal production period before the shutdown, and directly calculate the average wage of the 12 months prior to the termination of the contract. If the average wage is lower than the local minimum wage standard, the local minimum wage standard shall be used. The above calculation method has been used in the judicial practice in Shanghai. After the abolition of the "*Economic Compensation Measures for Violation and Termination of Labor Contracts*", more courts have adopted this view, some selected cases:

Location	Document	Description
Beijing	(2019) 京 01 民终 1007 号 No. 1007 [2019], Final, Civil Division, Intermediate I, Beijing	As for the calculation base of the economic compensation for the dissolution of labor relations, <b>the Court considers that there is no improper calculation of the economic compensation for the termination of labor relations by the court of first instance, which is based on the basic living expenses, 12 months before the termination of labor relations.</b> Zhang's appeal request to calculate the economic compensation for the termination of labor relations according to the standard of his normal salary of RMB 7500, lack of basis, the court does not support.
Tianjin	(2018) 津 02 民终 8535 号 No. 8535 [2018], Final, Civil Division, Intermediate II, Tianjin	Cui Fulin's working length before January 1, 2008, is equivalent to 1 month, and working length after January 1, 2008, is equivalent to 10.5 months. The average salary for 12 months before leaving is lower than the city's minimum wage during the same period. The city's minimum wage for the same period was used as the base for calculating compensation. After calculation, the appellant should pay the appellee's compensation for the illegal termination of the labor contract is RMB 23,575. ((2050 × 1) + (2050 × 10.5) = 23575) The court of first instance took RMB 2600 as the basis for calculating the economic compensation before January



		<p>1, 2008, which was corrected by this court.</p> <p>[Note: The first trial of this case calculated the economic compensation according to the wage standard before production stopped, and the second trial changed the sentence]</p>
Chongqing	<p>(2017)渝0105民初 10163号</p> <p>No. 10163 [2017], First, Civil Division, Chongqing</p>	<p>For the defendant's monthly average salary standard for the 12 months prior to the termination of the labor relationship, the <b>Court shall determine the average monthly salary amount payable from September 2015 to August 2016</b>. As for the defendant's wages of August 2016, the unit suspended work and production for more than one salary payment cycle, but the laborers did not provide normal labor; there are no relevant specific laws to determine their wages, so according to the standard of <b>Chongqing's minimum wage in 2016 of RMB 1500 per month × 70%</b>, it is RMB 1050 per month.</p>
Sichuan Province Daying County	<p>(2018)川0923民初2775 号</p> <p>No. 2775 [2018], First, Civil Division, Daying County, Sichuan</p>	<p>When the defendant applied for arbitration on September 17, 2018, he proposed to terminate the labor relationship with the plaintiff and to use the wages of the 12 months prior to the termination. As it recognized the living expenses for the period from September to December 2017 and August 2018, which were calculated at 70% of the minimum wage in Suining City, which was significantly lower than the minimum wage, and should therefore be calculated as a minimum wage of RMB 1650 from The Unified Implementation of the Minimum Wage as of July 1, 2018. RMB 1650 per month x 18 months = RMB 29,700.</p>

During this special period, it is recommended that enterprises try not to lay off employees or reduce lay off as much as possible, and negotiate with employees through consultation and democratic procedures to stabilize positions by adjusting salary,

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rotation, and working hours, and mutual understanding between employers and employees to overcome difficulties.

### **3. Cost reduction: make good use of the policies to reduce burden and support enterprises**

In order to help enterprises to resume production and operation, China has issued a number of policies to support enterprises, inclusive of all types of enterprises. Taking Shanghai as an example, the following measures to have been put in place to **reduce the labor cost** of enterprises:

#### **3.1 Repay unemployment insurance premiums**

Fifty percent of the total unemployment insurance premiums paid in 2019 will be returned to the enterprises meeting the qualification, while relaxing the conditions for the rate of layoffs in the unemployment insurance policy, for small and medium-sized enterprises: to relax the rate of layoffs to no higher than the previous year's national urban survey unemployment rate control target of 5.5%; for enterprises with fewer than 30 employees (including) participating in unemployment insurance at the end of 2019, the layoff rate will be relaxed to no more than 20%.

It is worth mentioning that in addition to the 50% of the insurance premiums paid returned, Minhang District of Shanghai will subsidize the enterprises 50% of the remaining premium by the district's finance. Songjiang District of Shanghai will give the enterprises up to RMB 600,000/year social security subsidy in accordance with the employment situation for enterprises that comply with the policy of stabilizing position in Punan.

#### **3.2 Some enterprises enjoy employment subsidies**

According to the *"Notice on Granting Employment Subsidies to Relevant Enterprises in the City to Respond to the Impact of Epidemic Situation on Stabilizing Jobs"* by the Shanghai Municipal Human Resources and Social Security Bureau, the Shanghai Economic and Information Commission, and the Shanghai Municipal Finance Bureau, during the Spring Festival (as of 24 hours on February 9, 2020). Enterprises with emergency requisition of production capacity, as well as those allowed to start operations after being approved by the District Economic Commission (Commercial Commission) and reported to the Municipal Economic Information Commission, are entitled to a one-time employment subsidy, according to the actual resumption of production during the Spring Festival. The standard is 1500 yuan per employee, the maximum subsidy per enterprise is RMB 5 million, limited to one application.

Established in Shanghai before January 1, 2020, and paid social insurance for accommodation, catering, cultural and sports entertainment, transportation, and tourism (travel agencies and related services, management of scenic spots). If the layoff rate in 2019 is not higher than the national urban survey unemployment rate control target in 2019, it will enjoy a stable employment subsidy. The standard is RMB 800 yuan per employee based on the actual number of urban employees who have paid social

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insurance in the previous month when the company applied. The upper limit of each enterprise subsidy is RMB 5 million, limited to one application.

### **3.3 Preferential policies for the employment of university graduates**

According to the *"Notice of the Shanghai Municipal People's Government on Issuing Several Opinions on Doing a Good Job in the Employment of College Graduates in Shanghai in 2020"*, enterprises recruiting qualified university graduates of the city in accordance with the relevant provisions and enjoy a tax and discount of RMB 7800 per person per year within three years in accordance with the relevant provisions.

Small and micro enterprises and social organizations, private non-enterprise units (social service organizations), foundations and other social organizations within Shanghai recruiting university graduates with the city's household registration, employed for the first time in two years after leaving school and sign a labor contract for more than one year can apply for social insurance subsidies in accordance with the provision. The subsidy standard is 50% of the social insurance premium paid by the unit calculated on the lower limit of the social insurance payment base of the employee in the current month. The term of the subsidy shall be calculated according to the actual number of months the enterprise registers the employment of university graduates and pay social insurance, up to a maximum of one year.

### **3.4 Phased reduction of three social security types**

From 2020, the start and end dates of the social insurance payment year (including annual medical insurance for employees) of Shanghai employees will be adjusted from July 1 of the current year to June 30 of the following year, with a delay of 3 months.

According to the *"Notice on the Implementation of Phased Reductions in Corporate Social Insurance Fees in the Municipality"* jointly issued by the Shanghai Municipal Human Resources and Social Security Bureau and the Shanghai Municipal Finance Bureau, from February to June 2020, three social insurance types (pension, unemployment, work-related injury) shall be exempted for small, medium and micro enterprises; the employee's personal payment is not exempted. Individual industrial and commercial households shall enjoy the reduction and exemption policy according to small and medium-sized enterprises. From February to April 2020, large enterprises (including private non-enterprise units, social groups and other social organizations) three social insurance types shall be levied in half.

### **3.5 Extend the social security payment period**

Due to the epidemic situation, if the payment of social insurance premiums of the participating unit is overdue, after filing with the Shanghai Social Security Agency, no late fees will be charged and the personal rights and interests records of the insured employees will not be affected. The relevant payment procedures can be completed within 3 months after the lifting of the epidemic.

### 3.6 Housing fund deferred payment policy

Enterprises affected by the epidemic in Shanghai, after discussion and adoption with the enterprise workers' congress or trade union, can apply to the Municipal Provident Fund Center for deferring the housing provident fund before June 30, 2020.

The continuous calculation of the deposit time during the period of deferred payment will not affect the normal withdrawal and application of housing provident fund loans by employees, nor will it affect the enterprises applying for deferred or its credit information.

### 3.7 Personnel rent subsidy policy

Several districts in Shanghai have formulated policies to provide short-term rental subsidies or talent rent exemptions to help companies retain core talent:

Location	Description
Shanghai Jiading	In the allocation of rent subsidies, small and medium-sized enterprises are more likely to be affected by the COVID-19 epidemic and have difficulties in production and operation. One thousand special short-term rental subsidy quotas were added. The subsidy standard is RMB 800/employee/month. The subsidy period was tentatively set at three months to subsidize the above SMEs to attract and retain the core team.
Shanghai Yangpu	During the epidemic prevention and control period, the talents of innovative and entrepreneurial SMEs in the district and the talent apartments operated by the subordinate units of the district will be given a 2 months half rent reduction.
Shanghai Qingpu	For public rental housing (talent apartments), specific targets are appropriately reduced or exempted.
Shanghai Putuo	For the SMEs in the region affected by the epidemic and experiencing difficulties in production and operation, a total of 1,000 special quotas for short-term rental subsidies are provided to help SMEs retain their core talents. The subsidy standard is RMB 800/employee/month, and the subsidy period is three months.
Shanghai Minhang	For enterprises that meet the talent placement subsidy policy of the "Chunshen Talent Plan", the number of rent subsidies will be expanded to 200%. For enterprises that conform to the "4 + 4" industry development orientation of the district, 1,000 special allowances for rental subsidies will be added.
Shanghai Hongkou	For the core talents of enterprises that are affected by the epidemic and cause difficulties in production and operation, the rent of talent apartments operated by state-owned enterprises in the area paid directly by employees are halved for February and March this year. in
Shanghai Songjiang	For enterprises that have made significant contributions to epidemic prevention and control, key support enterprises in the district, and SMEs that have been greatly affected by the epidemic, a new fund of RMB 15 million in aid for enterprise anti-epidemic talents will be added, and

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	5000 new housing subsidies will be added. Give a one-time subsidy of RMB 900/employee.
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### 3.8 Personnel training subsidy policy

According to Shanghai's policy, if the enterprises in this city need to continue to suspend work and production due to the epidemic situation, they can arrange for employees to attend online training while they are on duty.

Qualified enterprises can enjoy the subsidy at 95% of the actual training cost, the standard is up to RMB 600 yuan per employee per training program (in principle, no more than 3 times, the same training program cannot enjoy the subsidy repeatedly). According to the requirements of the district, the enterprise conducts online or offline filing before the training, submits the training implementation plan and conducts online training, and submits relevant materials and subsidy applications after the training is completed. After the review and approval of the Ministry of Human Services and the approval of the district financial department, the training fee subsidy will be allocated to the enterprise special account within 3 months.

Compared with the original policy of the city, the subsidy ratio is higher and the conditions are more relaxed. Compared with the current year's training program declaration, the method of applying for subsidies the following year greatly shortens the time for obtaining subsidies. Enterprises with training needs can make full use of this time to improve their vocational skills and save training costs.

### Conclusion

To conclude, the situation is dire for many and finance is at the heart of crucial decisions that may lead toward survival or death of the enterprise. This article summarized many aspects related to money during the post-epidemic period such as wages, termination compensation and cost reduction policies. Throughout the article we also demonstrated different local approach to these topics. We hope this shine lights to the many financial considerations of employment law and more importantly, how seemingly small and innocent details can vary widely in their local application. For enterprise survival during the post-epidemic period, both of these aspects should be considered to reduce costs and remain compliant.

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River Delta Law Firm is a Chinese law firm specialized in Labor & Employment Law. River Delta was founded 15 years ago and has over 200 labor professionals, making it the biggest and one of the oldest employment law firms in the People's Republic of China.

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*For all intent and purpose, the term China in this article refers to the People's Republic of China.*