
COVID-19 Travel Ban Series: How to Pay Your Foreign Employees Out of China

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From March 28, 2020, China suspended the entry of most foreign nationals, citing the temporary measure as a response to the rapid spread of [COVID-19](#) across the world.

This means that foreigners who hold the following visas are currently not allowed to enter the country:

- Chinese visa;
- Residence permit;
- APEC business travel card; and/or
- Port visa.

Due to these travel restrictions, which so far have presented no expiration date, many foreign nationals who hold a residence permit in China for working purposes are stuck outside of China during this time.

Many companies are now grappling with new HR, legal, and tax uncertainties that have arisen within their foreign employment relationship in the context of these new travel restrictions.

To see other articles in the series, click below:

- [How to Pay Your Foreign Employees Out of China](#)
- [How to Handle Your Foreign Employee's Work and Residence Permit](#)
- [How to Determine Your Foreign Employees IIT Liability in China](#)

(While the situation is fluid, China is in communication with the rest of the world, allowing some cross-border movement to handle personnel exchanges under special circumstances. This includes special movement of businesspeople, experts, and return of foreign workers to their China-based firms. We cover this in our article, [China's Travel Restrictions – Special Visa Applications](#).)

Paying your foreign employees out of China

Some foreign employees may wish to receive their Chinese salary in their overseas bank accounts in foreign currency, providing them enough money to support their international expenses and offering them more financial security during this special period.

For a Chinese employer, in practice, remitting an employee's salary overseas will first involve confirmation from the respective bank and accountant, in China.

For salary payments less than US\$50,000, there are no special processes required from the bank, and the remittance of the overseas payment can ensue as per usual. However, for amounts over US\$50,000, the bank will require a labor contract and tax filing form, along with some other information.

Additionally, if the settlement currency differs from the remittance currency, a supplementary contract is needed.

Chinese employers may elicit the help of an overseas company to make the payment to the employee, on their behalf. In such a case, an intercompany agreement should be arranged between the overseas and the Chinese company to determine the terms and the salary costs.

Further, some companies may decide to relocate their foreign employees back to the overseas headquarters. To do so, the employer must first terminate the Chinese employment contract and sign a new employment contract with the employee at the overseas company.

Exceptions to this are if the foreign employee originally held dual positions in both the overseas company and the Chinese company. In this instance, the employer can simply adjust the overseas employment contract and the foreign employee can get paid out of China.

Reassessing the salary package as a whole

If an employee is currently residing and working outside of their usual country, there may be a host of terms within the contract that may not be able to be adhered to without some further negotiation.

In such a situation, it is important to take the time to reassess and adjust the salary package, taking into consideration the different forms of income, welfare payments, social insurance, working hours, and payment method.

The employer and employee can consider the different types of compensations that are no longer applicable or need to be recalculated while working overseas. This can include, for example performance pay, bonus, social insurance, commercial insurance, housing allowance, or other forms of living allowance.

Welfare compensation may be a good starting point for renegotiating the salary package, as many of the benefits offered may no longer be applicable or useful (for example, commercial insurance that only covers Chinese territory, or housing allowance that is no longer needed as the employee is residing elsewhere). However, a mutual agreement is needed for this to take effect.

In addition to this, the company's operational capacity may be limited at this time, meaning that employees may also need to reduce or adjust the amount, time, and style of work.

In such circumstances, every company's situation and response will be unique. If the enterprise can establish a telecommuting system, the employer can pay the employees by the hour, according to the effective time the employees put in their work.

Where the company wishes to reduce the working hours of the employees – this must be done through negotiation. For example, by reducing workdays from 5 days-a-week to 3 days-a-week and correspondingly reducing the salary of employee. Alternately, the company can arrange shifts for employees who are in the same or similar positions and accordingly reduce their salary.

In China, employers need to bear in mind the minimum compliance requirements. So, for example, if a company in Shanghai decides to suspend their operations, the principle one-month full salary followed by minimum local salary standard shall be applicable.

If the standard working hour system is not applicable to the employee, it is suggested that enterprises apply to the local human resources and social security bureau to adopt other working hour systems, such as the [comprehensive working hour system or non-fixed working hour system](#), to meet their particular employment needs.

Employers and employees are encouraged to reassess and discuss their salary package in light of their adjusted situation and reach a mutual agreement on the changes to any key conditions in the labor contract.

Identifying your legal risks

For companies that have foreign employees stuck outside of China, it is necessary to consider the situation from a variety of different perspectives, including legal, HR, and tax.

From a legal perspective, it is important for the employer and employee to carefully review the employment contract during this time to highlight the items that are no longer applicable, need to be adjusted, or should be newly accounted for.

Businesses should consult their local professional services advisor for guidance on the statutory legal and HR procedures under each situation.

Your professional services advisor can help you with preparing your legal documents, such as suspension agreement, termination agreement, resignation letter, salary restructuring/adjustment agreement, or other amendments to labor contract, according to the option selected by the client.

Since its establishment in 1992, Dezan Shira & Associates has been guiding foreign clients through Asia's complex regulatory environment and assisting them with all aspects of legal, accounting, tax, internal control, HR, payroll, and audit matters. As a full-service consultancy with operational offices across China, Hong Kong, India, and ASEAN, we are your reliable partner for business expansion in this region and beyond.

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