



## Protecting Chinese Workers' Rights During the 2020 Epidemic: Guidance for Public Buyers

### 1. Synopsis

The new, flu-like virus first observed in China is now a worldwide epidemic with serious consequences and serious risks for workers' rights. The severity of the risks convinced the Chinese government to limit movement through high risk regions and force businesses to implement numerous emergency policies to control the epidemic. The Chinese government expects employers to support its prevention efforts, and to do this, the government defined new responsibilities for employers to extend employees' employment through the effects of emergency policies and give employees minimum incomes or subsidies for living expenses, depending on conditions.

The epidemic's effects will extend well beyond the risk of people becoming ill. Limits on people's mobility will obstruct people's return to work, implying a loss of income for everyone involved. Even with people returning to work, people will struggle with the restrictive environment of monitoring and quarantining. Within this context, we recommend public buyers consider the following steps to protect the rights of workers in their supply chains affected by the virus:



- Discuss your suppliers' need for flexibility.
- Ensure suppliers' response to and policies for the epidemic address the key risks for workers in your supply chains.
- Explore how suppliers expect to comply with the Chinese government's requirements to protect workers during the epidemic (Notice #5).
- Urge the development of monitoring methodologies sensitive to the risks to workers posed by the epidemic.



## 2. Evolution of the epidemic

The new, flu-like virus first observed in China in 2019 is now a worldwide epidemic. By February 24th, 2020, there were over 77,000 confirmed infections in China, including close to 65,000 infections in Hubei province, the center of the epidemic. With more than 2,200 infections confirmed in over 30 other countries, there is no doubt that the virus is highly infectious, and the recent rise of infections in diverse countries including South Korea, Japan, Italy



and Iran highlight the risk of the epidemic becoming suddenly and unexpectedly more serious.

To minimize confusion surrounding the virus, the WHO suggests referring to the virus with the term, “the virus responsible for COVID 19,” where COVID 19 is the illness brought on by the virus.<sup>1</sup> For the time being, the risk of someone dying from COVID 19 is low when considered next to other recent experiences like it. The SARS epidemic of 2002 likewise emerged from China, infected over 8,000 people, 9.6% of whom died from the illness.<sup>2</sup> The swine flu of 2009, with its origin in the U.S., infected 20% or more of people in close to 20 countries studied in only the first year of the epidemic. Even though under 0.02% of infected persons lost their lives, it’s believed that approximately 200,000 people died from the swine flu.<sup>3</sup>

At the time of writing, the proportion of people losing their lives to the virus responsible for COVID 19 is 3.3% of persons infected. There is inconsistency in the reported risks, however. Only 1.2% of infections outside of mainland China ended in a loss of life, while 3.4% of infected persons in Hubei province died. But these figures will continue to evolve, and experts consider the epidemic serious since the virus is highly infectious even before showing symptoms, and there is the possibility the virus might evolve to become more destructive.

## 3. Emergency requirements

The severity of the risks convinced the Chinese government to limit movement through high risk regions and force businesses and other institutions to implement numerous emergency policies to control the epidemic. In addition to requiring businesses to postpone their return to

1 [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30419-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30419-0/fulltext)

2 <https://onlinelibrary.wiley.com/doi/full/10.1046/j.1440-1843.2003.00516.x>

3 <https://onlinelibrary.wiley.com/doi/pdf/10.1111/irv.12074>



work following Chinese New Year, the government publicized its “Notice #5” on January 24<sup>th</sup>, 2020 outlining principles and requirements in connection with efforts to control the epidemic.<sup>4</sup> Of note, Notice #5:

- **Requires employers to pay employees who miss work** either due to illness, suspected illness, seclusion following their close proximity with infected persons or the effects of other government emergency policies (e.g., restrictions on mobility between regions).
- **Prohibits employers from dismissing protected employees**, including employees recovering from illness, employees in compulsory seclusion, and employees who otherwise miss work due to emergency policies to counter the epidemic. This principle includes the explicit requirement to extend the employment of fixed term employees until they complete their recovery, required seclusion, or other emergency policies disrupting their return to work come to an end.
- **Requires employers whose production is stopped by the epidemic to pay employees** in full through a first income period (commonly one month) and, if production does not resume, to offer employees minimum living subsidies defined by government in the region.

## 4. Expected risks

The epidemic’s effects will extend well beyond the risk of people becoming ill. Limits on people’s mobility will obstruct their return to work, resulting in a loss of income for everyone involved. Even with people returning to work, they will likely struggle with the restrictive environment of monitoring and quarantining. Within this context, we outline the risks we expect this epidemic poses for workers’ rights and suggest constructive steps public buyers can take to protect the right of workers in their supply chains affected by the epidemic.

### 4.1 Living expenses without employment

The government extended Chinese New Year festivities to reduce the movement of people between provinces likely to contribute to the widening epidemic. Hubei province, the center of the epidemic, is home to close to 60 million people, millions of whom commonly seek work outside of the province. Movement in and out of the province is currently strictly restricted. But with the number of infections outside of Hubei province rising and likely underreported, people worry over how to best get the country returning to work while keeping the epidemic under control.

Untold millions of Chinese citizens will find it difficult to promptly return to paid employment. The government’s notice to employers to ensure employees receive minimum incomes during the crisis might help. But workers interviewed by ERI express little confidence in their

<sup>4</sup> Chinese version: [http://www.gov.cn/zhengce/zhengceku/2020-01/27/content\\_5472508.htm](http://www.gov.cn/zhengce/zhengceku/2020-01/27/content_5472508.htm); English version: <https://www.chinalawtranslate.com/en/notice-on-improving-the-handling-of-issues-in-labor-relationships-during-the-period-for-protection-and-control-of-pneumonia-from-the-novel-coronavirus-infection/>



employers' willingness to secure employees' income without them returning to work. The good intentions behind the government's policies will likewise not be sufficient to help the millions of electronics workers without secure employment who might be in between repetitive rounds of short term employment or might find that the footloose recruiters who hire them simply refuse to fulfill their responsibilities.<sup>5</sup> In addition, employers will likely slow down new recruitment to reduce their expenses during the crisis. Low income households without the resources to stretch through this difficult period will come under terrible stress, even when these households' livelihood depends on employment in the electronics sector.

## 4.2 Discrimination

Even before the epidemic, in the Chinese context, some employers showed preferences in hiring or refusing to hire people from different provinces. The epidemic is driving discrimination within and beyond Chinese borders. Sometimes, discrimination is even incentivized by emergency policies to fight the epidemic, such as the policies of some Chinese government offices to offer ¥ 1,000 to citizens who identify fellow citizens from Hubei or other "high risk" persons.<sup>6</sup> We should expect some employers to refuse to hire people from Hubei, even former Hubei residents who did not visit the province during the epidemic, afraid of the risks of infection from the virus.

## 4.3 Withheld income and restrictions on freedom of employment

The consequences of the epidemic for business include postponed orders, difficulties with logistics and employee recruitment and other unexpected expenses. It is no surprise that evidence is mounting that the stress of these trying times tempts some suppliers to prioritize other needs over employees' income.<sup>7</sup> This is likely to heighten the risk of workers experiencing withheld income or unexpected deductions to their income.

Even if employers genuinely find it difficult to secure the funds for employees' income in this crisis, there will be further consequences from the postponed income. Employees will struggle with their living expenses. Some might resign and never receive the income owed them for work they completed. Possibly even more concerning, the withheld income will undermine employees' freedom of employment, pressuring them to agree to employment conditions they might otherwise resist, worried they will otherwise lose income owed to them.

Withheld income will not be the only issue contributing to restrictions on freedom of employment. For example, one electronics supplier scheduled students to intern with them for one month. But government restrictions prevented these students from returning home when their internship ended. So the students found themselves forced to extend their internship two additional months.

5 <https://www.asiaglobalonline.hku.hk/dispatch-work-china-labor/>

6 <http://www.rfi.fr/tw/中國/20200130-武漢肺炎致湖北人鼠年受歧視如過街老鼠>

7 <https://fortune.com/2020/02/19/coronavirus-china-workers-businesses-pay-wages/>



#### 4.4 Lost sick benefits

Pre-existing government requirements give sick employees some rights, even if their illness is not the result of their employment. This includes prohibiting employers from dismissing sick employees from their jobs before they recover, up to a maximum recovery period of three to 24 months depending on their seniority. They likewise oblige employers to provide employees with incomes not below 80% of minimum income requirements in the region while employees recover from their illness.

The government's Notice #5 widens these benefits to include not only sick employees, but employees suspected of illness and employees who miss work due to emergency policies to prevent the epidemic. Given how infectious COVID 19 is and the millions of Chinese citizens whose mobility is now limited by emergency policies, this is a non-negligible widening of employers' responsibilities. Notice #5 further underlines that struggles with the effects of the epidemic will not be considered sufficient grounds to dismiss employees who miss work due to illness or epidemic prevention efforts and that the government expects to depend on employers to subsidize employees' living expenses even when the epidemic forces businesses to stop running for extended periods of time.

However, the definition of these rights and benefits in these policies is not sufficient to enforce them. Even generous employers will likely struggle to meet their responsibilities during this crisis without support, and the government will likely struggle with its own resources. So we should expect inconsistencies in the enforcement of these sick benefits and a high likelihood that some workers find themselves left to fend for themselves.

#### 4.5 Tensions over forced seclusions and Security

The government's notice mentions not only employees confirmed of infection, but refers to employees suspected of infection and those who were in close proximity of infected persons. The wording recognizes that efforts to prevent the epidemic will influence people well beyond those directly infected. Subjective perceptions will influence who is expected to spend time in quarantine, and it is likely some people will try to side-step forced seclusion. The conditions of seclusion or how the wider community views seclusion efforts could incite other conflicts, some quite explosive, like the conflict between police and 1,000 citizens upset infected persons were housed so close to their community.<sup>8</sup>



Security officer checks electronics workers for signs of fever in Chongqing.

<sup>8</sup> <https://www.ntdtv.com/b5/2020/01/30/a102764708.html>



In this time of crisis, the Chinese government is likely to depend on employers to buttress its own resources, and this is likely to intensify tensions between employees and security personnel. We expect this will contribute to disputes, sometimes directly connected to efforts to enforce quarantining. Stressful conditions might contribute to other difficulties less directly.

#### 4.6 The limits of social auditing

Social auditing norms were not designed to be sensitive to some of the risks of this epidemic. Despite the issues of Section 4.2, few employers will write prejudiced employment policies down, and people denied employment will not present themselves to auditors for interviews. Likewise, social auditors will struggle to interview employees who experience the problems discussed in Sections 4.3 and 4.4 including employees who are forced to pay illicit fines when they resign, employees fired before they recover from illness, and employees fired before emergency policies preventing them from returning to work come to an end.

The problems extend beyond the question of who is on site for interviews. The employment rights outlined in Notice #5 depend on pre-existing employment ties, closely tied to the risks outlined in Section 4.1. But possibly millions of electronics employees will be in between short, fixed terms of employment during the epidemic, even if they expected to return to their former employer when the epidemic ends. This group of unprotected electronics employees is larger than it would be if electronics suppliers hired most of their employees directly, respecting government restrictions on employers' use of short term employment and outside recruiters. Excessive short term employment through outside recruiters is a problem that social auditing did not solve prior to the epidemic. Thus, we should not expect that more social auditing will improve enforcement of rights to employment security during the epidemic. Auditing likewise tends to miss the risks of hostility in the work environment, like the issues discussed in Section 4.5, since hostility is more difficult to link to explicit code of conduct requirements unless tensions spill over into more obvious conflicts.

## 5 Recommended steps

### 5.1 Discuss your suppliers' need for flexibility

We recommend public buyers review their own options, get to know their suppliers' needs and consider giving Chinese suppliers the flexibility they need to control the epidemic. Chinese suppliers and other businesses depending on them will experience serious disruptions from the epidemic which will slow product shipments. Suppliers will struggle to fulfill their pre-existing commitments, afraid of risking longer term business if they upset clients, while trying to support the costly policies the country needs to reduce the risks of the epidemic. If clients respond to possible difficulties without considering this context, they might intensify pressure on suppliers to seek short cuts, possibly even undermining suppliers' efforts to control the epidemic.



## 5.2 Review suppliers' response to and policies for the epidemic

Request suppliers to report their policies for responding to the epidemic. Even when suppliers do not follow their own policies to the letter, these policies will highlight suppliers' perceptions of expected issues and how to respond to them. This is a pragmatic way to open discussion of the difficulties surrounding the epidemic. Reported responses and policies will likely elicit useful questions, highlight blind spots and promote constructive discussion. Will their policies help ensure respect for workers' rights or could they contribute to some of the risks listed in Section 4?

## 5.3 Explore how suppliers expect to comply with Notice #5

Discuss the rights and responsibilities outlined in the Chinese government's Notice #5 with suppliers to show support for the government's intention to support workers through this crisis. Question suppliers how they intend to comply with the rights and responsibilities outlined in Notice #5. Expect suppliers to stress their own difficulties and try to explore constructive solutions to more effectively protect workers' rights.

## 5.4 Urge monitoring sensitive to workers' needs during the epidemic

Question how suppliers monitor workers' rights risks during the epidemic and refer, concretely, to the problems we expect listed in Section 4.6. This will help highlight the limits of existing auditing efforts and should provide opportunities to suggest how monitoring might better meet workers' needs during the epidemic.

To identify where and when the epidemic undermines workers' rights, we recommend monitoring methods that prioritize the collection of workers' testimonies including, though not limited to, less structured interviews off site and in the community, guided by workers' rights experts with experience winning workers' trust and open-endedly exploring workers' experience beyond the norms of checklist monitoring. We further suggest consciously monitoring for the issues expected during the epidemic by pursuing topics and interviews more likely connected to these issues. This should include verifying how suppliers monitor and respond to the perceived risk of infections, conducting interviews to collect the experience of employees from Hubei, employees hired through outside recruiters, and employees who become ill or were otherwise expected to seclude themselves to prevent the risk of infections.

Public buyers should generally ensure that they link these recommendations to the subject-matter of the contract, i.e., to the goods or components of goods that are procured through the contract. Under EU rules, public buyers cannot require contractors or suppliers to remediate or prevent worker rights violations in all their supplier factories or adopt general policies to protect workers' rights; instead such requirements must target factories and workers that manufacture or assemble the goods or components of goods that form the subject-matter of the contract.

