

## China Insight



# The Future is Now: The New World of Work in China

Dear Sir or Madam,

As we continue to struggle with COVID-19 while also trying to retain a semblance of business as usual, the way we work has been changed extensively, in some respects potentially forever. We, China employment team discussed about relevant legislative or policy changes that employers need to be aware of as well as the challenges that the future of work could give rise to in CMS webinar held on 23 March 2021. Below is the article which summarized our discussion in the webinar.

Kind regards,  
**CMS, China**

As a result of COVID-19 and measures put in place in response to the pandemic, countries around the world – including China – have adopted new innovations in the area of employment in a bid to keep their workers safe and productive. One such innovation is work from home.

Now, more than a year after the pandemic began, home-office work has proven so effective, many believe it will become a fixture of our post-pandemic future. But remote work raises a host of legal and administrative challenges. This article – based on the 23 March 2021 webinar **The Future is Now: The New World of Work in China** and hosted by labour law experts Jeannette Yu and Sophy Wang with CMS China – explores the impact of homeworking in China for both workers and companies.

### **Work-from-home in China expands due to the pandemic**

Before the COVID-19 pandemic began, work from home was not commonly practised in the People's Republic of China, explains Sophy Wang, an Associate with CMS China. However, like in many other labour markets in the world, the unique pressures of the COVID-19 crisis compelled Chinese business to embrace and utilise work from home as a way to protect workers while maintaining business operations.

### **Advantages and disadvantages**

Across China, businesses utilising work from home have reported that this form of employment offers a host of advantages, says Jeannette Yu, a Partner with CMS China. According to Yu, the major advantages include:

- This form of work reduces employer overhead through the reduction of office space and its costs.
- Employees are often more productive in their home environment because they are able to establish a work routine that best fits their personal circumstances and are able to devote the time they previously spent commuting to job duties. According to Yu, the advantage of eliminating commuting is particularly pertinent for employees working in major cities like Beijing and Shanghai.
- Employees report greater work satisfaction since work from home gives them the freedom to – explains Yu – "a

better work-life balance".

- Lastly, work from home has created more stability in the work force with few incidences of "turnovers" reported.

Initiating work from home, however, can pose challenges. According to Yu, employers in China have also reported the following disadvantages:

- Less immediate face to face communication between employees and employers over business and operational matters;
- Less immediate monitoring of the daily performance of home working employees by managers and employers;
- The fear that sensitive company data is at risk when processed in the home-office environment;
- And the inability of some workers to perform their work consistently throughout the working day due to personal distractions. This is primarily an issue for urban employees living in small apartments that lack an isolated separate space where home workers can do their jobs.

### **Arranging work from home**

According to CMS Partner Yu, work from home in China simply indicates a shift of the employee's work premises from the office to an employee's residence.

Currently, China has no specific law regulating the form of home working, except for legislation passed specifically in response to COVID-19.

Yu stresses that China's labour code regulations still apply to employees who are conducting operations from home, and that home-working employees enjoy the same rights as office- and factory-based workers.

Part of the popularity with work from home in China is linked to the relative ease with which this form of employment can be implemented in response to COVID-19. According to CMS expert Yu, in response to the pandemic, a Chinese employer can initiate a work-from-home arrangement with an employee (i.e. to arrange employees working by phone or by the internet and through other electronic means at home) if the company deems it in the best interests of employee health and business operations.

With restrictions and the risks of infection diminishing in some areas of China as COVID-19 is brought under control, employers and employees either now or in the future may be interested in beginning or continuing work-from-home arrangements based on the many advantages of this form of employment.

To implement work from home outside of the pandemic, explains CMS expert Yu, an agreement between the parties must be reached and finalised. "No matter whether it is the intention of the employer or the employee to work from home," explains Yu, "the consent of the other party must be obtained".

This arrangement generally is sealed through a mutual agreement between employer and employee. All of the company's internal regulations, rules as set down in the employment agreement, and labour laws also apply in the work-from-home scenario.

According to Yu, this means that the working hour of home-working employees, who are under a standard working time system, is still subject to the rule of eight hours per day and 40 hours per week. "If these employees do overtime work," says Yu, "the employer must make overtime payments" or "grant them compensatory time-off if the overtime took place on weekend" in accordance with the law.

### **Challenges**

Despite its benefits, initiating a work-from-home arrangement can pose difficulties for both employers and employees. For employers, the challenges of this arrangement include:

**Devising strategies to keep isolated home-working employees "productive and motivated"**. According to CMS labour-law expert Yu, productivity can be aided by having employees submit work reports (i.e. a summary of accomplishments and activities) on a regular basis. Also, the productivity of employees can be assisted by having home workers focus on achieving specific goals, results or "deliverables".

**Maintaining data security and industrial secrets.** With sensitive data, personal data and information vital to a company's operations now being processed in the home office, employers can safeguard this information by drafting "confidentiality rules for mobile workers", says Yu, who adds that employers can create "confidentiality obligations"

for employees.

**Ensuring that home offices are safe and healthy working environments.** As explained by Yu, an employer under Chinese law has a general obligation to provide safe and healthy working environments to all employees. For home-working employees, it will be difficult for employer to ensure to fulfill this obligation. To reduce risks, says Yu, employers may request individual employees to undertake creating home offices in their residences that are safe, healthy and efficient.

Another challenge posed by the pandemic is a dramatic reduction in staff mobility, says CMS labour-expert Yu.

## **Mobility**

According to CMS Associate Sophy Wang, during the pandemic control period, staff mobility, particularly for international travel, has been greatly affected by pandemic-related protective measures put in place by the Chinese government.

For the duration of the pandemic, Chinese regulations on business travel include:

### **Domestically**

- The Chinese government marks different places or areas as low-, medium- or high-risk based on its assessment of the pandemic situation in each location.
- Travel is possible to areas with a "green" designation for infection levels and there are virtually no restrictions on movements in these low-risk areas of China.
- Business travellers arriving from or passing through medium-risk and high-risk areas must enter 14-day quarantine and take NAT-Tests.
- Because no jurisdiction in China is currently listed as medium-to-high risk, these restrictions do not currently apply.

### **Internationally**

- Currently, foreigners are not allowed to enter China. According to CMS's Wang, this restriction does not apply to individuals holding Chinese residence permits for work, personal matters and reunion purposes. Furthermore, foreigners who need to come to China for necessary and urgent economic, trade, scientific or technological activities or for emergency humanitarian needs may apply for special visas from Chinese embassies or consulates. (To receive such a special visa, foreign business travellers must first be issued an invitation or PU letter from the competent Chinese authorities).
- Upon entering China, the traveller from abroad is subject to a minimum of a 14-day isolated quarantine and must have negative results from two COVID-19 NAT-Tests. In some places, the isolated quarantine period could be extended to 21 or 28 days depending on the local pandemic-preventive measures.

## **New health and safety measures**

In order to safeguard Chinese workers during the pandemic, the government has implemented a series of health and safety measures, which currently focus on vaccinations. The major provisions of these regulations include the following:

- Vaccinations are provided to Chinese citizens and workers free of charge, but are not compulsory.
- Although not compulsory, Chinese employers can encourage their personnel to receive vaccinations.
- An unvaccinated employee can be assigned different duties in order to safeguard other employees, clients or customers, but employees cannot be penalised for their unvaccinated status unless pre-existing company policies state otherwise.

## **Digitalisation**

If any one factor makes work from home possible, it is recent advances in digital technology. "By relying on digital technology", says CMS expert Wang, "employees can create a digitalised workplace in their homes".

According to Wang, advances such as Artificial Intelligence (AI) and cloud computing are vital to making work from

home possible. But other technologies, such as blockchain, big data and the Internet of Things are revolutionising both the Chinese and global economies.

In terms of day-to-day office work, digitalisation is most likely to be felt in three key areas, says Wang:

- In the transformation of home offices, no matter their locations, into "uniformed digitalised workplaces". By creating and using uniform digitalised workplaces, companies may gain great efficiency in terms of internal communication or exchanges, real-time project tracking, etc.
- In the regular operations of HR and management, where daily tasks and processes can be automated and interfaced by AI and algorithms. With such automation, employees can be released from manual repeated work tasks and have more time focus on more creative work.
- In the training and management of staff. For instance, by using digitalised systems, companies may customise training courses for employees taking into account companies' business needs and employees' skill profile. Employees can use mobile devices to carry out more informal and interactive learning.

According to CMS experts Jeannette Yu and Sophy Wang, digitalisation is expected to influence the Future of Work in China in a host of positive ways, creating a more flexible employment environment that includes work from home, and increasing both productivity and worker satisfaction. Furthermore, digitalisation has been acknowledged by Chinese legislators to some extent. For instance, the PRC Civil Code which just became effective on 1 January 2021, provides that any electronic data, which can be shown in material form through electronic data exchange or e-mail, and can be accessed for reference and used at any time shall be regarded as a written form. Another example refers to the PRC Law on Electronic Signatures, which expressly provides that e-signature, using digitalisation technology, shall be recognised as a valid form for signing contracts. This legislation provides legal support to companies in the digitalisation of their daily work and management processes.

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For more information or advice on implementing work from home in China, please contact your CMS client partner or local CMS experts:



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# About CMS, China

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