Goss IP

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INSIDE

Dear readers,

The new issue of GossIP reports some IP, Tech and Food cases which are on the top list of this beginning 2021.

The first case analyzed is the so called Fendi Signboard case: started in 2015, the battle between parallel importers and trademark owners came finally to an end. Quite interesting story, with some reversed decisions.

Still on IP topics, we discuss the trademark of the name of a well-known person: the USA president Joe Biden. Did you know that his name wad trademarked in China since 1999? When you're a public person, you should keep in mind that you don't have privacy.

And talking about privacy, China ha been reforming its legislation on protection of personal data and released some Provisions for mobile internet applications to make easier for users to understand how relevant data can be processed.

A big step on the direction of improving the environment is the new Anti Food Waste law: 32 articles summarized in our article and commented to make clear the requirements of the law, the responsibilities of government and various subjects and the regulatory measures that will be taken.

The last article talks about a still hot topic, not only in China: the anti-CoVid vaccination. Analyzed from 2 different points of view – employer and employee – the article makes a point about the measures that can be taken in the office to limit the spreading of the virus and protect the work environment.

Enjoy the reading and get ready for the spring!

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IP Law

The Fendi Signboard case: the final decision is out!

The long-awaited retrial and final decision in the case Fendi vs. Shanghai Yi Lang International Co., Ltd. (hereinafter referred to as *"Yi Lang"*) has been finally issued on March 4th, 2021. The decision confirms the conclusions of the Second instance judgement which declared the infringement conducted via the unauthorized use of Fendi trademarks/tradename on the signboard of mono-brand store selling parallel imported goods.

The conflict between parallel importers and trademark owners exists in China since long time. Having China substantially adopted the principle of the international exhaustion of the trademark right, selling parallel imported goods is generally regarded as legitimate.

However, parallel importers, trying to nobilitate their positioning, sometime cross the lines of the fair and descriptive use of the trademark.

As mentioned above, on March 4th, Shanghai High Court issued the final judgement of Fendi v. Yi Lang, concluding the 2nd instance judgement, and ruled that the parallel importer Yi Lang's unauthorized use of Fendi trademarks/ tradename on the signboard constitutes trademark infringement and unfair competition.

This decision is the last chapter of the judicial battle which lasted for 5 years.

In 2015, Yi Lang started to operate a Fendi store in Capital Outlets in Kunshan city, where they provided parallel imported Fendi goods (original products) without having the authorization from Fendi, yet using "FENDI" trademark on the signboard, shopping bags, advertising brochures and WeChat Official Account.

In 2016, Fendi filed the litigation with the court claiming trademark infringement against its commodity trademark and service trademark and unfair competition against its tradename.

First Instance Judgement

The 1st instance judgment ruled that the use of trademark and tradename of Fendi is to indicate the source of goods and constitute fair use therefore non-infringement.

The court applied a 3 steps test to decide whether the use of mark constitutes fair use:

1. Whether such use is in good-faith and reasonable; 2. Whether such use is necessary; 3. Whether such use would cause confusion among relevant public.

For infringement on the service marks, the court quoted *the Reply to the Question of Whether Category 35 of the International Classification Includes Services of Shopping Malls and Supermarkets*, where it indicated that Class 35 trademark refers to *"providing advice, planning, publicity, consulting and other services for others to sell commodities (services)"*, which does not include *"wholesale and retail of commodities"*, therefore Yi Lang's use of Fendi does not constitute an infringement on Fendi's class 35 trademark.

For unfair competition acts against Fendi's tradename, the court ruled that given use of FENDI logo is to indicate the source of goods, therefore does not constitute an infringing act.

Second Instance Judgment

The 2nd instance judgment reversed the 1st instance judgment, ruling that Yi Lang's use constitutes trademark infringement and unfair competition.

The 2nd instance court concurred on the test applied by the 1st instance Court, yet ruled that the use made by Yi Lang is suggesting to the consumer that they have certain connections with Fendi company, which exceeds the scope of fair use.

Such use is the same as *"Enterprise operation and management"* in Fendi's class 35 trademark, therefore constitute trademark infringement.

The 2nd instance court also ruled that the tradename *"FENDI"* has already acquired certain level of market awareness and being known with relevant public, therefore can be protected as *"tradename"* regulated under Anti-unfair Competition Law.

Continue reading

Retrial and Final Judgement

Final judgment made by the high court concurred the judgment made by Second Instance Court, yet made clarification on below matters.

✔ **Whether the use of *"FENDI"* logo infringe upon Fendi's service mark**

The final judgement ruled that the use of FENDI logo as signboard belongs to an act of sales of goods, does not belong to a sub-class of class 35 service mark.

However, it does constitute a similar service of class 35 trademark based on:

a. similarities on the purpose, content, method, subjects;

b. relevant public would generally believe there would be certain connections and therefore would be easily misled.

Shanghai High Court ruled that Yi Lang is providing similar service with FENDI's class 35 trademark.

In the meantime, using FENDI by itself on the signboard, though with certain distinguishing identifier in surrounding areas, shopping bags and shopwindow, would easily mislead relevant public.

Therefore, such service is similar with FENDI's class 35 trademark, hence constitute trademark infringement.

✔ **Clarify the test for deciding fair use**

Shanghai High Court reverses the test applied by the 1st and 2nd instance court, *"whether the use of trademark would cause confusion among relevant publics"* is not an element to decide fair use. Even if certain use would cause confusion, the court should decide such matter based on:

a. whether the purpose is in good-faith;

b. whether the method is reasonable;

c. whether the use fits the commercial customs with integrity.

Shanghai High Court ruled that the usage made by Yi Lang blurred the boundaries between the authorized stores and collection stores, therefore does not constitute fair use.

✔ **Yi Lang unauthorized use of FENDI logo would constitute an unfair competition act against FENDI's tradename.**

Shanghai High Court ruled that tradename with certain level (instead of *"relatively high level"*) of market awareness, being known (instead of *"being familiar"*) with relevant publics can be protected as *"tradename"* regulated in Anti-unfair Competition Law.

Given Yi Lang is making sale of original products, such use would not cause confusion of goods among consumers.

However, a signboard is used to indicate the store operator or indicate a certain connection between the store operator and the owners of relevant business identifiers.

The store operated by Yi Lang is neither a direct operated store of Fendi, nor an authorized store of Fendi, there will be a high possibility of confusion using FENDI logo as the signboard.

The distinguishing identifiers used by Yi Lang would only make things worse, misleading relevant publics to believe that there might be certain connections between Fendi and the store operator.

Therefore, Shanghai High Court concurred that the use of FENDI logo constitute an act of unfair competition against Fendi's tradename.

The decision is welcome since it clarifies and hopefully says the final (for the moment) words on this debated topic.

We note that several other cases are pending in front of the same and similar courts and were de facto slowed down expecting the high court to take the final stance on the issue.

We now look forward to faster and consistent decisions.

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IP Law

Biden getting noticed… as trademark applications reflect!

We have already written few times on these pages that certain facts happening far away from China might have a clear and quick impact in terms of new trademark filings at CNIPA. This time, as was predictable, it is the turn of Mr. Biden, President Biden actually.

Far before Mr. Joe Biden became the president of America, his name in both English and Chinese was already registered at the CNIPA, but not by himself. The surname of Mr. Biden is translated in Chinese as 拜登 pronounced as *"baideng"* and it is a clear transliteration of the English sound.

The earliest Biden trademark for 拜登 *"baideng"* was filed on 1999-02-01 by Bayer Aktiengesellschaft in class 1 and 2. It seems plausible that Bayer might not have anticipated such election in 2020 and probably it is only a coincidence.

Nevertheless, based on a search done a few days ago, we have located a total of 106 trademarks identical to or including " 拜登 " applied to the CNIPA.

Biden (in Latin characters) is less popular than " 拜登 " (as "Baideng"), however there are also several Biden trademarks in English applied at the CNIPA since 2015.

There is even one (*"Trump-Biden"* in Chinese) applied to the CNIPA, and is currently pending for review of refusal.

Considering the situation, it is very likely to be rejected by the CNIPA.

Many " 拜登 " or *"Biden"* trademark applications were approved for registration, because back to the time of examination, Biden was not famous in China for the general public.

However, things are different now. It is safe to predict that after Biden's inauguration, the CNIPA very likely will reject every trademark application identical or similar to " 拜登 " or *"Biden"*.

Taking Trump/ 特朗普 as a reference, before he announced his candidacy for President of the United States in 2015, many trademarks similar or identical to Trump/ 特 朗 普 have been approved for registration. However, after the year 2015, trademarks similar or identical to Trump/ 特朗普 were all refused by the CNIPA.

Actually in 2020, even applications for " 特没谱 " *"TeMeiPu"* (which means unreliable person), a common parody of Mr. Trump (" 特 朗 普 ") are almost all being rejected by the CNIPA.

Learning from Trump's examples, we can see that before 2015, trademark applications similar or identical to Trump were applied and registered by third parties. This is because before 2015, Trump was not popular in China, and general consumers were not familiar with him.

However, after Trump's announcement of his candidacy for president in 2015, his name *"Trump"* became every popular in China.

According to Article 32 of the Trademark Law, *"No applicant for trademark application may infringe upon another person's existing prior rights, nor may he, by illegitimate means, rush to register a trademark that is already in use by another person and has certain influence".*

Therefore, before Trump has *"certain influence"* in China, trademark applications with his name generally does not violate the Chinese Trademark Law. However, after 2015, Trump becomes known in China, and almost all Trump-related trademarks were rejected by the CNIPA.

It is safe to predict that similar situation will happen to *"Biden"* trademarks. Although there are *"Biden"* trademarks already registered in the CNIPA, after Biden's inauguration, the CNIPA will actively refuse Biden related trademarks, and even parodies of Biden trademarks if any.

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Tech Law

Apps shall respect more privacy of users

Keeping up with the international trend of privacy protection, China is pushing forward its legislation to encourage the healthy development of its digital economy.

The country has been steadily reforming its legislation on privacy protection. As part of the rectification actions against the excessive collection of personal data and the illegal use thereof conducted by some mobile apps, the Ministry of Industry and Information Technology plans to officially release the *"Interim Provisions on the Management of Personal Information Protection for Mobile Internet Applications"* (draft for comment).

The deadline for the submission of comments will be announced upon the official release of the draft.

The Interim Provisions, known to contain 22 articles, are going to establish two fundamental principles of personal data processing for mobile apps, namely informed consent and minimum necessary requirement.

The former requires that when engaging in personal data processing activities, a mobile app should inform users of its personal data processing rules in a clear and easy-to-understand language, and should provide full support for users to make a voluntary and clear declaration of will.

The latter generally requires that the activities of mobile Apps should be subject to clear and reasonable restrictions, avoiding excessive and unnecessary processing of personal data.

The Interim Provisions impose obligations on five types of entities: app developers, app distribution platforms, third-party service providers, mobile terminal telecommunication equipment manufacturers, and network technology service providers.

In terms of administrative compulsory measures and penalties, the process includes issuing rectification notice, public announcement, removing from platforms and disconnection.

In the event of repeated or serious violations, the competent authority will advise app distribution platforms and terminal telecommunication equipment manufacturers to issue risk warnings in the courses of integration, distribution, pre-configuration and installation of the relevant app.

It is expected that the release of the Interim Provisions will set out a bottom line and increase the predictability for the digital market. However, there may be some room for improvement in these regulations.

For instance, the obligations of the five types of entities need further clarification. Regarding app distribution platforms, there should be requirements to publicize their self-discipline management rules for public supervision. In the meantime, a complete and effective complaint reporting mechanism has yet to be established.

It will be interesting to see whether and how the final version of the Interim Provisions answers these questions.

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Food Law

Don't throw it away! The new Anti Food Waste Law

The 24th session of the Standing Committee of the 13th National People's Congress deliberated on the *"Anti-food-Waste Law of the People's Republic of China (Draft)"* (the *"Draft"*), which has been published for public comments.

There are 32 articles in the Draft, which mainly stipulate the principles and requirements of anti-food waste, the responsibilities of the government and its departments, the responsibilities of various subjects, regulatory measures and legal responsibilities.

Let's take a look at the main points of the Draft.

Food Waste

According to Article 2, Food refers to the food specified in the Food Safety Law, including all kinds of food for human consumption or drinking.

Food Waste refers to the failure to utilize the food that can be safely eaten or drunk based on its functional purpose.

NB - The purpose of food and beverage is to taste and drink, but if it is wantonly thrown or discarded, it is not used according to its functional purpose, and this is called waste.

Dining of official activities

The Draft clarifies that government organs, state-owned enterprises and institutions should refine and improve the dining standards for official reception, meetings, training and other official activities, and strengthen the management.

Standardized diet shall be carried out for dining in official activities, and the amount and form shall be arranged scientifically and reasonably.

NB - Government organs, state-owned enterprises and institutions need to order in advance when they are participated in official activities and should not be given special treatment.

Catering Service Providers

Catering industry, collective catering and takeout (catering service providers) should:

1. Be equipped with management systems such as procurement and storage, conduct anti- food waste training, and actively provide signs to prevent food waste, and the service personnel should prompt and explain the order amount to guide consumers to order according to their needs.

NB - catering service providers should bear their duties of reminding consumers in various ways. If the consumer orders too much, catering service providers have the obligation to remind consumers to order the appropriate amount.

2. Reasonably determine the amount and portion of food, and provide consumers with different specifications such as small amount.

NB – catering service providers should provide small amount of food for consumers to choose.

3. For the buffet service, inform consumers about rules and requirements of anti-food-waste, provide different specifications of tableware, and remind consumers to take appropriate amount of food.

NB – catering service providers should place notice boards and small plates.

4. Enrich the menu information and the menu can be marked with ordering tips for consumers, such as food amount, recommended number of consumers, etc. and provide public tableware and packaging service according to the needs of consumers.

Continue reading

Canteens

Canteens of working units should improve the way of serving meals, such as post or place anti-food-waste signs at eye-catching spots, and guide diners to take and have meals in an appropriate amount.

In addition, they should strengthen the inspection during meals, and timely correct the wasteful behaviors.

NB – Signs and inspections must be in parallel, and waste of food should be corrected when necessary. Highly suggested to provide boxes for take away leftover food; if the food is not suitable for packing, it is possible to supervise the diners to finish the meal on site.

For school canteens and off campus catering units, we should strengthen fine management, provide meals on demand, and improve the pattern of feeding.

More importantly, the scientific diet shall be promoted and the canteens should enrich the choices of different specifications, ensure the quality of dishes and staple foods, and constantly improve and enhance the taste, so as to improve the satisfaction of diners.

NB – Diners with small appetite can share food with diners with a larger appetite: this will not only maintain friendship, but also save the food.

Takeout Platform

The food and beverage take out platform shall prominently remind consumers to order a proper amount of food. If the catering service provider provides services through the take out platform, it shall provide prompt information such as food portion, specification and recommended number of consumers on the platform page.

Supermarkets & Shopping Malls

Supermarkets, shopping malls and other food operators shall strengthen the daily inspection of the food, and classify and manage the food close to the shelf life, and display and sell it in a centralized way.

NB – On the premise of ensuring food safety, food business operators can sell or donate food near the shelf life at a discount, which is not a waste of food but also beneficial to others.

Regulations and Standards of Food

The Draft provides for relevant rules at national, industrial and local level to be formulated and reviewed, and for food waste prevention to be taken as an important factor in preventing and minimising waste while maintaining food safety guarantees.

The shelf life of food shall be set reasonably and marked according to law.

NB – Food waste should be considered when setting the shelf life.

Food Production and Operation

If a food producer or business operator wastes food severely in the process of food production or business operation and fails to take measures for rectification, the relevant competent department of the local people's government at the county level (or above)may make an interview with the legal representative or principal person in charge.

The food producers and operators to be interviewed shall make rectification immediately. This poses a challenge to some food enterprises that focus on grain processing, such as the proportion of defective materials in the production of various potato chips.

NB – Producers and operators of potato chips and other types of puffed food should pay attention to the fact that improper proportion may cause food waste.

Monitoring on Food Waste

The food and catering industry association shall carry out food waste monitoring, strengthen analysis and evaluation, and publish relevant results of anti-food waste work and monitoring and evaluation to the public every year, provide support for state organs to formulate laws, regulations, policies, standards and conduct research on relevant issues, and accept social supervision.

New Mission: Monitoring evaluation of food waste

Live-streaming

It is forbidden to produce, publish and broadcast programs or audio and video information that publicize food waste, such as eating and drinking with big amount.

If a network audio and video service provider find any violation of the provisions of the preceding, it shall stop the transmission of relevant contents timely; if the circumstances are serious, it shall stop the services immediately.

Programs like King of big stomach may be banned

Donation

The civil affairs departments of the local people's governments at or above the county level shall establish a donation demand docking mechanism: this will guide food producers and operators to donate unsold food (that can be safely consumed within the shelf life) to relevant social organizations, welfare institutions and relief agencies.

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Punishment

If a catering service provider, in violation of the provisions of this law, induces or misleads consumers to order excessive amount of food, causing obvious waste, the market supervision and administration department, or the competent commercial department of the local people's government at or above the county level, shall order to make corrections and issue a warning; if it refuses to make corrections, it shall be fined not less than 1,000 yuan but not more than 10,000 yuan.

In violation of the provisions of this law, if a unit with a canteen fails to formulate or implement measures to prevent food waste, the relevant competent department of the local people's government at or above the county level shall order it to make corrections within a time limit and issue a warning. If it fails to make corrections within the time limit, it shall be fined not more than 2,000 yuan.

If, in violation of the provisions of this law, a radio station, television station or network audio and video service provider produces, publishes or broadcasts programs or audio and video information promoting waste of food, such as overeating, the competent department of radio and television and the Department of network information, in accordance with their respective functions and duties, shall order to make corrections and issue a warning.

If they refuse to make corrections or if the circumstances are serious, they shall be fined not less than 10,000 yuan but not more than 100,000 yuan, and it may also order the relevant business to be suspended and closed for rectification.

Furthermore, the person in charge and other persons directly responsible can be investigated for legal responsibility in accordance with the law.

What's your plan for your next meal?

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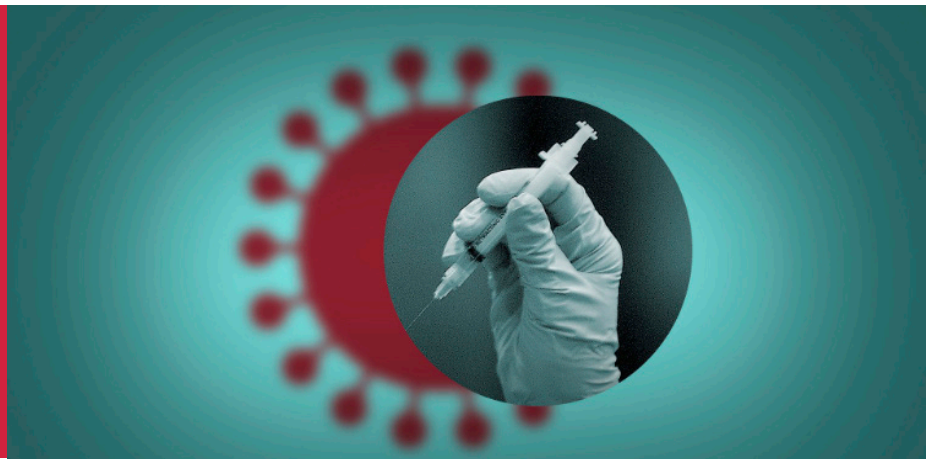
Labour Law

Can a firm force employees to get CoVid-19 vaccine?



China Food & Drug Administration has given market approval to the country's first COVID-19 vaccine Sinopharm. The conglomerate says its vaccine has a 79% efficacy rate — close to the 80% needed to extinguish the epidemic.

Sinopharm's two doses of inactivated vaccines[1] have been already administered to nearly 1 million people for emergency use and no serious adverse reactions have been reported[2]. About 70,000 volunteers, ages 18-59, who were recruited in China between April 16 and May 5, have participated in the phase-III clinical trials.

The vaccination has now been granted for some key groups, including inspection workers at customs, porters at entry ports, workers who work for international and domestic transport industries, medical workers and government workers.

Nevertheless, there are some individuals that are suggested not to take the vaccine, due to allergies or pre-existent disease or immunodeficiencies.

Even if highly suggested, the vaccination is not mandatory.

We asked Claire Fu and Marco Vinciguerra, lawyers at HFG, a few questions about what employers in China can or cannot do in order to maintain a safe environment, with specific reference to Covid19 and vaccination.

1. Can an employer require an employee to wear a mask during working hours if he/she is showing symptoms which may also be associated to those of Covid-19?

In general, except where the use of a sanitary mask (or other personal protective equipment such as glasses or gloves) is required for the performance of specific duties by the employee, an employer may not impose on an employee an obligation to wear a mask at work.

However, the response to this question may vary in circumstances where public health issues are involved. Such circumstances may also vary from place to place, depending on the level of seriousness of the health issues involved.

In Shanghai, where the outbreak of the Covid-19 was successfully kept under control, authorities promulgated on 27 October 2020 the Regulations of Shanghai Municipality on Emergency Management of Public Health (the *"Regulations"*), which became effective on 1 November 2020. The Regulations set forth that *"people in public places are required to wear masks during epidemics of respiratory infectious diseases"*. Although the concept of *"public places"* (in Chinese 公共场所) is not defined in the Regulations, according to Administrative Regulations on Sanitation of Public Places (issued on 1 April 1987 and last amended on 23 April 2019) public places are defined to include:

- ✔ hotels, restaurants, inns, rest houses, coffee bars, pubs, tea houses;
- ✔ public bathrooms, barber shops, beauty salons;
- ✔ theaters, video rooms, entertainment halls, ballrooms, music halls;
- ✔ stadiums, swimming pools, parks;
- ✔ exhibition halls, museums, galleries, libraries;
- ✔ shopping malls (stores), bookstores;
- ✔ waiting rooms (in hospitals, bus stations, ports), public means of transport.

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[1] The vaccination drive is in two steps, with an interval period of at least 14 days. The vaccine is called inactivated: Using chemical means, the vaccines curb infection and replication of the COVID-19 virus, and trigger human immune response activity.

[2] The vaccine appeared to be safe and well-tolerated at all tested doses, researchers reported. The most common reported side effect was pain at the injection site. The findings were published on The Lancet Infectious Diseases journal (Yanjun Zhang,Gang Zeng, Hongxing Pan, et al, Safety, tolerability, and immunogenicity of an inactivated SARS-CoV-2 vaccine in healthy adults aged 18–59 years: a randomised, double-blind, placebo-controlled, phase 1/2 clinical trial, The Lancet Infect Dis, November 17, 2020 - https://doi.org/10.1016/S1473-3099(20)30843-4)

Under the combined provisions of the regulations referred to above, employees working in "public places" are therefore required (by law, rather than by contract or demand of their employer) to wear a mask, although they show any symptoms.

Consequently, employees required to work in public areas not wearing a mask in such places would be in breach of a legal obligation and could be sanctioned accordingly. In the event of a violent outbreak of a dangerously infectious disease, such a breach may even be considered so serious (if carried repeatedly, for example) as to justify a termination of the employment relationship.

With regards to employees working in private offices, it is not clear whether such work-spaces may fall within the definition of public spaces (although, theoretically, the health reasons underlying the Regulations referred to above may well be applicable to big offices, especially those adopting open-space layouts).

However, the Regulations also clearly require that companies (and, therefore, employers) have a responsibility in the prevention and control of the epidemic and should strengthen the health monitoring and timely report any abnormal situation to relevant authorities.

Therefore, where a company/employer has reasons to believe that an employee may suffer from, or shows symptoms of, an infectious disease, it has a duty to urge the employee to seek medical treatment, accept and cooperate with the Centers for Disease Control and community health service centers to carry out investigation and handling of infectious diseases, and implement the relevant prevention and control measures.

Under such circumstances, an employer would, therefore, be under an obligation to require an employee showing symptoms of an infectious disease to adopt such prevention and controlling measures as may seem reasonable or necessary, including that of wearing a mask while in the office.

2. Is it possible for an employer to require an employee showing symptoms which may be associated to those of Covid-19 to leave the office and work from home for the safety/protection of all the other employees?

In such a situation, for the reasons and according to the provisions explained above, an employer would have a legal obligation to take controlling and prevention measures.

Therefore, where an employee showed symptoms of a potential respiratory infectious disease, it would be a reasonable measure to ask him/her to work from home (or have his/her health condition verified in the event smart-working or remote-working may not suitably apply to his/her duties).

As a precaution, where an employer fears that other situations similar to an outbreak of an infectious disease may occur in the future, specific provisions may be inserted in the Employees' Handbook with the aim of regulating such situations (in particular, the use of personal protective equipment in the office and the conditions upon and according to which smart-working or remote-working may be requested by the employer).

In such circumstances, the employees would also have a contractual obligation to abide by the directions of the employer.

3. Is it possible for an employer to require by contract to existing or new employees to get vaccinated against Covid-19 (or, more generally, to get any other vaccination the employer may consider useful for the safety of the employees)?

China follows and implements a system that sets both a right and an obligation for individuals living in China to get vaccinated against diseases that fall within the immunization program established by the law. To date, Covid-19 vaccine has not yet been added in the Chinese immunization program.

Under such premises, an obligation to get vaccinated could not be provided for by contract, as the decision as to whether getting vaccinated is ultimately a choice of the individual (as an expression of his/her freedom, also recognized at constitutional level, of accepting or refusing a medical act).

Even where public health concerns were raised, such as in a pandemic of the kind of the Covid-19 one, and where vaccination may be considered as an efficient solution against the spreading of an infectious disease, only a specific law would have the power to create an obligation to get vaccinated. Any contractual arrangement imposing such an obligation would probably be considered invalid and certainly not enforceable.

4. Is it possible for an employer to dismiss an employee who refuses to get vaccinated against Covid-19?

As of today, vaccination against Covid-19 in China is not compulsory, but only recommended (where available). An employee refusing to get vaccinated would, therefore, not be in breach of any obligation. A dismissal of an employee based on such a refusal would therefore be groundless and illegal.

Continue reading

Similarly, an employer could not refuse to hire a person merely on the fact such person is infected with Covid-19.

As a matter of fact, the Provisions on Employment Service and Employment Management establish that an employer cannot refuse to employ a person on the ground that the candidate is a carrier of some infectious pathogen.

In such case, the person found (after an appropriate medical verification) to be an infectious pathogen carrier would only be required not to take up his/her job before being cured or otherwise cleared from being a potential threat of an infectious disease.

This conclusion seems to be upheld by the fact that, according to the current medical knowledge, it is still not clear as to whether the vaccine against Covid-19 provides merely a protection to the vaccinated person from the symptoms of the disease or also prevents the same person from infecting other people.

In the former case, the fact of being vaccinated would not eliminate the risk of further spreading the infectious disease and could, therefore (from a logical standpoint, rather than a legal one), not be considered as necessarily required for the protection of the other employees.

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