

Protect Your Employees, Protect Your Business — A Practical Guide to Labor Law Compliance in China

Companies lacking knowledge of China's labor regulations face the risk of being entangled by labor disputes. AJ Hu explains the key legal considerations for employing staff in China.

The recent series of high-profile labor events has thrown a spotlight on the protection of workers' rights in China.

Several foreign multinationals, including FoxConn, McDonald's and Yum! Brands Inc - which owns the KFC brand, had been investigated for providing poor working conditions, underpaying their part-time workers and engaging in other unfair labor practices. The rescue of slave workers from the brick kilns and mines in Henan and Shanxi provinces had also made headlines in many local and international news media.

These events and the recent enactment of the revised China labor law on June 29th, 2007 - after 18 months of heated debates, are reminding foreign investors to be mindful of their legal obligations as an employer in China.

Obligations of Foreign Employers

China has its own unique labor system and regulations. Apart from the usual employment requirements, such as signing contracts with workers, meeting wage standards and issuing salary timely, employers in China are also obliged to:

1. File their staff employment and dismissal with relevant government bureaus
2. Maintain employees' personnel file - a unique Chinese document that records all academic and employment history of an employee, and the responsibility of maintaining the file is transferred from one employer to another when the employee changes jobs
3. Withhold and pay individual income tax on behalf of their employees
4. Make monthly contributions to their employees' social benefits and housing funds



Most of the above processes are complicated by the involvement of several government bureaus and tedious paperwork. For the unfamiliar, staffing their China operations may pose a challenge.

What follows is a useful list of "must-knows" for employers in China.

Employment contract

Official employment contracts written in Chinese must be provided to all employees. While there is no standard contract format, the agreement should bear critical information including term of contract, probation period, job responsibilities, labor protection and working conditions, compensation, termination conditions, disciplinary rules and breach of contract provisions. Depending on individual needs of companies, it is also common to include other contract terms such as non-compete clause, non-disclosure agreements and training bond period.

Term of contracts

Three legal forms of employment terms exist in China:

- Fixed Term Employment - contract terminates once the stated time period lapse. Upon expiration, the contract can be renewed with mutual consent from both contracting parties.
- Open-Ended Employment - contract without termination date.
- Project-based Employment - contract terminates upon completion of a stated project.

Due to the common abuse of fixed-term contracts by companies to avoid long-term employment commitments, the new labor law includes several provisions to curb such practice and better protect workers' rights. Now, companies can sign at most two fixed-term contracts with an employee and are obliged to pay severance compensation if they do not renew the contract.

Wages

The wage standards vary across different regions of China, depending upon economic conditions and job requirements. For Shanghai, the current minimum required wage stands at RMB 750.

Social Welfare Benefits

Employers are obliged to contribute to the employees' social welfare benefits on a monthly basis. *The Domicile City Insurance* is the most common benefit scheme adopted for employees of Shanghai residency. The contribution by both employer and employee is detailed in the table below:

Social benefits	Shanghai		Beijing		Guangzhou	
	Paid by company	Paid by employee	Paid by company	Paid by employee	Paid by company	Paid by employee
Pension insurance	22%	8%	20%	8%	20%	8%
Unemployment insurance	2%	1%	1.5%	0.5%	2%	1%
Medical insurance	12%	2%	10%	2%	8%	2%
Workplace insurance	0.5%	0%	1%	0%	0.5%	0%
Maternity insurance	0.5%	0%	0.8%	0%	0.5%	0%
Housing fund	7%	7%	8%	8%	5%	5%
Total	44%	18%	41.3%	18.5%	36%	16%
Minimum Salary base	1478 RMB		1640 RMB		1816 RMB	
Maximum Salary cap	7392 RMB		9024 RMB		9080 RMB	

The contributions are calculated based upon the gross salary paid to the employee, but a varying minimum base and maximum cap applies for Shanghai, Beijing and Guangzhou.

Working hours

The China labor law stipulates an eight-hour workday, with no more than 40 working hours per week for full-time employees. If there is a specific need for overtime, companies would need to discuss the arrangements with relevant unions and provide overtime compensation, set at 150% of normal wages for overtime on normal workdays, 200% for rest days, and 300% for national holidays.

Leave and vacations

Similar to other international labor practices, China's leave and vacation policy includes annual leave, wedding leave, funeral leave, maternity leave and sick leave. In addition, employees working out of their registered province or city are eligible for family visitation leave.

Termination

Generally, workers can terminate their employment contracts by providing a 30 days' written notice to the employer. However, the prior notice can be exempted if the worker is still under probation or if the company fails to fulfill its legal obligations as an employer.

Termination by employers is much more complicated and often involves severance compensation. An employer can dismiss staff without prior notice or severance pay only if the worker fails to perform during the probation period or if the worker commits a serious breach of conduct, dereliction of duty or crime in accordance with the law. In other situations, the employer will be required to give 30 days' notice to the employee and/or pay compensations stipulated by the provincial governments. The new labor law also states that companies planning to reduce their workforce must consult the labor unions 30 days prior to the dismissal.

It is undeniable that China offers vast opportunities to foreign investors, but at the same time, the risks of labor disputes can significantly impact business operations. It is therefore critical for employers to develop responsible HR strategies that ensure stable business operations in China.

AJ Hu is the Partner of The JLJ Group (www.iljgroup.com), a one-stop service-provider assisting foreign companies to enter or grow in the China market.

