# CHINA: EMPLOYMENT AND SOCIAL INSURANCE

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Labour relationships are mainly governed by the PRC Labour Law, the PRC Labour Contract Law and related rules, regulations and implementing rules. Besides such State-level legislation, many locally applicable rules and regulations have to be considered when assessing labour legal compliance in China. The aforesaid labour legislation applies to all companies in the PRC, including Foreign Invested Enterprises ("**FIEs**"), and covers both foreign and Chinese employees.

## 1. Employment of PRC National Staff: Direct Hires and Labour Dispatch

**Direct Hire by FIEs**: Domestic enterprises as well as FIEs (e.g. Wholly Foreign Owned Enterprises ("**WFOEs**") and Sino-Foreign Equity Joint Venture Enterprises ("**EJVs**") can and generally must employ their Chinese national staff directly.

**Labour Dispatch for Representative Offices**: Representative Offices of foreign companies in China cannot hire PRC staff directly but must recruit all PRC national staff through qualified human resources agencies holding the necessary licenses in the PRC. If these agencies do not have any suitable staff available, they will place advertisements for the Representative Offices to find suitable staff. Such PRC staff is then employed by the agency based on a formal labour contract. In turn, the agency and the foreign company who has established the Representative Office in China will enter into a labour dispatch service agreement which sets out the framework for the labour dispatch. For each individual staff dispatched, in addition a labour dispatch notice will be signed between the agency and the foreign company. Generally the reputable nationwide agencies use standard form agreements for which there is only limited room to negotiate. In addition the foreign company/the Representative Office can enter into supplementary agreements with the dispatched PRC staff to regulate matters not otherwise (or in insufficient detail) regulated in the labour contract/labour dispatch agreement (e.g. confidentiality, reporting, code of conduct, office-specific matters and alike). The agencies receive a monthly fee depending on their internal fee schedules and depending on different types of services they provide (which can even include tax declaration, payroll etc.). The agencies are obliged to pay for various forms of social insurance on behalf of the employees and for the mandatory housing fund contributions. These "employer" contributions are covered by the payments made by the Representative Office to the agency. Some of the more well-known and nation-wide operating agencies are: Foreign Enterprise Service Corporation ("**FESCO**"), China International Intellectech Corporation ("**CIIC**"), and China Star Corp. for International Economic and Technical Cooperation.

**Labour Dispatch for FIEs**: FIEs (and also domestic PRC enterprises) may also employ personnel via local labour agencies, however only to a limited extent. The labour dispatching unit (= agency) and the dispatch accepting unit (= FIE) shall conclude a labour dispatch agreement and labour dispatch notice that covers the number of seconded persons, the terms of the dispatch, remuneration, payment method and social insurance. Labour dispatching units and staff to be dispatched must conclude fixed-term labour contracts with a term of not less than two (2) years.

Over the years legislation has limited access by companies (but not by representative offices) to labour dispatch arrangements and aimed to put a focus on direct employment by companies. Legislation requires "equal pay for equal work" for direct hires and dispatched staff, mandates that the number of dispatched staff retained by a company cannot exceed ten percent of the total number of its employees and stipulates that labour dispatch shall not be regarded as the main/regular form of employment but shall only be admissible in special cases, namely for:

- temporary positions with a term of no longer than six (6) months;

- auxiliary positions in non-core business operations that serve the core business positions of the company. Companies – if wishing to use the labour dispatch model – shall determine the auxiliary positions for which dispatched staff shall be retained by putting forward proposals and opinions after consultation with the employee congress or all employees and upon consultation with the trade union or employee representatives. The auxiliary positions so determined shall be announced internally;

- substitute positions performed in replacement of the permanent staff members during periods when such staff members are unable to discharge their job responsibilities because of e.g. leave (maternity, study or vacation) or similar reasons.

## 2. Employment of non-PRC (Foreign) Staff

FIEs as well as domestic PRC enterprises can employ also their foreign staff directly (or if such staff is sent from the foreign headquarters to China also employ such staff based on secondment agreements).

Representative Offices of foreign companies in China cannot hire foreign staff directly (and in practice most Chinese human resources agencies do not dispatch foreign staff). In such cases usually the foreign company that has established the Representative Office in China hires the foreign staff abroad and seconds him/her to China (even in such cases however the agencies will still be able and willing to arrange the PRC social insurance contributions for foreign staff).

China-based employers must obtain an employment license to legally employ a foreign employee and the foreign staff usually requires a work permit, a working visa ("**Z-Visa**") and a residence permit to legally reside and work in China.

### 2.1 UNIFIED WORK PERMIT PLAN AND CATEGORIZATION OF FOREIGN STAFF

The PRC State Administration of Foreign Experts Affairs ("**SAFEA**") streamlined the application process for work permits by applying a Unified Work Permit Plan under which a unified work permit has to be obtained by foreigners wishing to work in China. With the unified work permit, foreigners working in the PRC obtain a personalised, perpetual numeric ID (similar to the US social insurance number or a German tax identification number) und which the foreign staff's employment history will be recorded.

The Unified Work Permit Plan implements a three-tiered classification system administered by SAFEA under which foreign staff gets classified as "A", "B", or "C" Level Foreign Employees, depending on an employee's score according to the new classification system. The score is based on factors such as age, education, salary, work experience, proposed duration of the employment in the PRC, Chinese language skills etc.

"A Level Foreign Employees" refer to "Top Talents", requiring a minimum score of 85 award points according to the calculation standard set forth in the Unified Work Permit Plan. Generally, the following employees would fall into such scope:

- Foreigners that fall into the scope of certain "Talents Pools" as outlined in the Unified Work Permit Plan;
- Foreigners with internationally recognised professional achievements, e.g. Nobel Prize winners;
- Foreigners holding important positions, e.g. senior management of state-owned key enterprises, Fortune 500 enterprises and certain FIEs in industries encouraged by the Chinese government;
- Innovative talents, e.g. initial shareholders or senior management or chief technical experts of certain technology innovation enterprises;uöizzuözu
- Excellent young talents, e.g. young talents (younger than 40 years of age) conducting post-doctoral research at the top 200 foreign universities or Chinese universities;
- Foreigners with a score of 85 award points according to the calculation standard set forth in the Unified Work Permit Plan.

"B Level Foreign Employees" refer to a "Professional Talents", requiring a minimum score of 60-85 award points according to the calculation standard set forth in the Unified Work Permit Plan. Generally, the following employees would fall into such scope:

- Foreigners with at least a bachelor's degree, a minimum of two years relevant work experience, below the age of 60 (exceptions possible), employed as either manager, professional technician or chief representative, etc.;
- Foreigners with vocational skill qualification certificates applicable nationwide or skilled talents that are in short supply;
- Foreigners with an annual income not less than four times of the local average annual income.

"C Level Foreign Employees" refer to a "Regular Staff", with a score of less than 60 award points according to the calculation standard set forth in the Unified Work Permit Plan. Generally, the following employees would fall into such scope:

- Foreigners employed under agreements between Chinese and foreign governments or approved/authorised by the relevant administrative department of the State Council;
- Foreign interns employed under inter-governmental agreements;
- Foreigners engaged in housekeeping services accompanying A Level expatriates;
- Foreigners working in special industry sectors such as ocean fishing;
- Foreigners engaged in seasonal works.

There exists no publicly available and effective legislation providing for specific consequences attached to a classification as either A, B or C Level employee. However, A-level employees can submit online-only applications and will be more easily approved while one may expect that depending on actual circumstances Level C employees may face tighter scrutiny and also overall access of such employees to the China labour market will be limited.

### 2.2 APPLICATIONS FOR PERMITS, LICENSES AND VISA

The following general steps are usually required in order to legally employ foreign staff in China (local variations may apply and contacting the local authorities to inquire about the actual requirements is essential and absolutely necessary):

- Employers first apply to the competent labour authority for an employment license;
- Afterwards, employee apply to SAFEA for a "Work Permit Notice";

- With the “Work Permit Notice”, the employee applies for a Z-visa at his/her home country with the PRC embassy or consulate;

- With the Z-visa, the employees can enter the PRC and within 15 days of entry, his/her employer applies to the local labour authority to obtain a work permit;

- After the work permit has been received and within 30 days of entry, the employee applies to the local Public Security Bureau for a foreigner residence permit that states the purpose of residence as “employment”.

Work permits are usually valid for a fixed duration and renewals can be filed the earliest within 90 days prior to expiration and latest within 30 days prior to the expiration.

If the employer or place of work indicated on the work permit changes, the work permit needs to be changed accordingly. If the employment terminates or ends, the employer must deregister the work permit and the residence permit.

For staff who is applying for the first time for the above licenses, permits and visa, the whole application process is rather complex and time consuming and realistically a few months should be calculated for completing the above described processes.

Also, in general the following requirements need to be fulfilled in order to be eligible to apply for the requisite permits, licenses and visa to legally work in China as a foreign national:

- Employers hold valid business licenses or similar incorporation documents in China:

- Employees can prove at least two (2) years relevant work experience abroad after having obtained their academic degrees:

- Employees hold at least a bachelor degree or higher academic certificate;

- Employees provide an official document from his/her home country showing they have no criminal records abroad;

- Employees provide a clean bill of health / medical report;

- Applicants provide an employment/secondment contract for employment in China;

- Employees are above 18 years of age and have not reached statutory retirement age (in China that is 60 years for men, 55 years for women, exceptions can be granted for very senior positions and subject to special approval only).

All application documents that are not in Chinese language must be translated into Chinese and certain documents also must be notarised/legalised and authenticated by the competent foreign and Chinese authorities.

The various applications with the different PRC authorities in charge must first be submitted online and in part later usually also be submitted in hard copy.

# 3. PRC Labour Contracts: Labour Law and the Labour Contract Law

Any labour contract with a PRC employer (whether foreign invested or not) must be governed by PRC laws and cannot be legally governed by foreign jurisdictions (irrespective of whether the staff is of PRC or foreign nationality).

### 3.1 TYPES OF CONTRACTS: FULL TIME AND PART-TIME; CONTRACT CONTENT

PRC labour laws differentiate between full time labour contracts and part time labour contracts.

While legally speaking a written form requirement does not exist for part time labour contracts, it is recommended that any type of labour contract is concluded in written form.

If an employer fails to enter into a written employment within thirty days as of the work commencement and provided the written form is required (which is the case of any full time labour contract), the employee is entitled to claim double salary and if no written contract is concluded within one year of commencement of work, the employee is entitled to enter into a non-fixed-term labour contract.

We will in the following only focus on full time labour contracts:

**Term of labour contracts:** Full time employment contracts under PRC law can either be open term, fixed term or project based contracts. Fixed term contracts can be concluded for any term of below ten (10) years. There are certain circumstances when an employee has a right to ask for an indefinite term labour contract, e.g. among others if an employee has worked for the same employer for ten (10) consecutive years, he/she is entitled to ask for an open term contract. Also e.g. upon the expiration of two (2) consecutive fixed term contracts (concluded after 1 January 2008 and irrespective of their terms) with the same employer, employees are entitled to an open term contract if they so elect. Foreign staff shall in general not enter into labour contracts in excess of a five year term (even though in practice longer terms often are agreed upon).

**Probation Period:** Depending on the duration of the contract term, a probation period can be agreed upon. If the term of a labour contract is more than three (3) months and less than one (1) year, the probation period may not exceed one (1) month; if the term is between one (1) year and less than three (3) years, the probation period may not exceed two (2) months; and if the term is fixed for three (3) or more years or is open-ended, the probation period may not exceed six (6) months. Hence, the probation period to be entered for a given contract proposed by the employer can be of any duration of up to six (6) months based on the understanding that an open term contract is offered. The probation period shall be included in the term of a labour contract. The wage of an employee during probation shall not be lower than the lowest wage level for the same job of the employing unit or be less than 80 percent of the wage agreed upon in the labour contract, and shall not be lower than the minimum wage rate in the place where the employing unit is located.

**Hours of Work:** The basic work week is forty (40) hours/week and eight (8) hours/day (not necessarily Monday to Friday, the days can be decided by the employer). For overtime work, overtime pay of between 150 percent to 300 percent of the regular salary applies. Overtime work shall not exceed one hour per day and thirty six (36) hours per month.

For positions which due to their nature require flexibility of working time and the standard working schedule is not suitable, such as senior managers, sales staff, construction, harvest workers, drivers, etc., employers may adopt more flexible working time calculation methods such as e.g. the non-fixed working time schedule. Such schedule is generally subject to the labour authority's approval. The application is required for a job position, not for an individual employee. Applications shall be submitted to the labour authority at district level where the employer is registered (some locations do not require such approval for certain positions, e.g. in Beijing for general managers and other senior management staff it is sufficient to agree on these terms in the individual labour contracts). Under the non-fixed working time schedule, no overtime payment is required for working hours beyond the standard working time schedule but the employer must arrange for appropriate rest time (e.g. extra days off or paid leave entitlement in excess of the mandatory minimum requirement according to law).

**Medical Treatment Periods:** The medical treatment period for non-work-related illness ranges from three (3) months to twenty four (24) months depending on the number of years an employee has been working for the employer. According to general statutory regulations, during medical treatment periods, employers must pay only a certain percentage of the employee's remuneration.

**Paid Annual Leave and Public Holidays:** Employees are entitled to paid annual leave based on their employment duration (this refers to their aggregate employment duration with all employers and thus is not restricted to the service term with the current employer) at the following minimum levels: five (5) days for employees with an employment duration of one (1) up to ten (10) years; ten (10) days for employees with an employment duration of ten (10) up to twenty (20) years and fifteen (15) days for employees with an employment duration of

above twenty (20) years of employment. Paid leave shall generally not be carried forward to the next year but shall be taken during the year of entitlement. Where employers require employees to carry paid leave over to the next year, it may be carried over to the next year only. As for the annual leave due but not taken by the employees, the entity shall pay the employees 300 percent of their daily wages for each day of the annual leave due and not taken. Therefore, employers are well advised to keep track that the employees really take the paid vacation when due.

In addition, employees are entitled to public holidays as follows: New Year's Day one (1) day, Chinese New Year three (3) days, Lunar Pure Bright Day one (1) day, Labour Day one (1) day, Dragon Boat Festival one (1) day, Mid-Autumn Festival one (1) day and National Days three (3) days. In practice, to create longer consecutive holidays, the Chinese government usually tries to align the above public holidays with the closest weekends. For this purpose, Saturdays or Sundays may be exchanged with working days. For example, if the New Year's Day is on Thursday, to create 3-days holiday, the government will exchange the coming Sunday with Friday, which means that on Thursday, Friday and Saturday, the employees are on leave. The specific arrangement is subject to notification of the central government. However, a company is not obliged to implement such special arrangement.

**Salaries:** Employers are entitled to set salaries at their discretion and based on the rule of equal pay for equal work (e.g. no differences may be made based on race, gender, religion or on an arbitrary basis). Salaries may not be lower than the locally published minimum wage standards set by the local governments. E.g. the latest published average monthly salary in Beijing is RMB 7,706 and the minimum monthly salary is RMB 2,000 while for Shanghai the latest published monthly average salary is RMB 6,504 and the minimum monthly salary is RMB 2,300.

**Mandatory Social Insurance and Housing Fund:** As a rule foreign staff holding work permits as well as all Chinese staff must participate in the mandatory basic social insurance, namely pension, medical (now also more and more including the previously separate maternity insurance), work-related injury insurance and unemployment insurance. In addition, PRC staff only shall participate in the mandatory housing fund.

Exemptions for foreigners to participate in the mandatory PRC social insurance may e.g. apply in cases where a foreigner working in the PRC does not hold and is not required to hold a work permit (e.g. if he/she works in China for less than three months) or where his/her employment relationship is governed by a bilateral social insurance treaty (currently China has entered into such treaties with Germany, South Korea, Denmark, Finland, Canada, Switzerland, Netherlands, France and Spain) which exempts certain (but normally not all) of the PRC social insurance contributions.

Employers must withhold employee contributions from monthly salary payments and pay the employee's and employer's contributions to the social security and housing fund accounts. Fines can be imposed for late payment. Actual contribution amounts vary locally. Contributions by and for Chinese and foreign employees are calculated equally (except for housing fund which is not applicable for foreign staff). Sample calculations for Beijing and Shanghai as applicable in March 2018 based on a monthly salary at or above the maximum assessment basis (which equals three times the local average salary at a given location) are provided for reference purposes only as follows:

| | Beijing | | Shanghai | |
|---|---|---|---|---|
| Max. Assessment Basis | RMB 23,118 | | RMB 19,512 | |
| | Employer | Employee | Employer | Employee |
| Pension* | 19% | 8% | 20% | 8% |
| | RMB 4,392 | RMB 1,849 | RMB 3,902 | RMB 1,561 |
| Medical | 10% | 2% (+ RMB 3) | 9.5% | 2% |
| | RMB 2,312 | RMB 465 | RMB 1,853 | RMB 390 |
| Maternity* | 0.8% | – | 1% | – |
| | RMB 185 | – | RMB 195 | – |
| Work-related injury (rate depends industry)* | 0.2%-1.9% | – | 0.2%-1.9% | – |
| | RMB 46 - 439 | – | RMB 39-370 | – |
| Unemployment* | 0.8% | 0.2% | 0.5% | 0.5% |
| | RMB 185 | RMB 46 | RMB 98 | RMB 98 |
| Sum | 30.8-32.5% | 10.2% (+ RMB 3) | 31.2-32.9% | 10.5% |
| | RMB 7,120-RMB 7,513 | RMB 2361 | RMB 6,087-RMB 6,418 | RMB 2,049 |

* Employer contributions are based on the total payroll of the employer and with more and more locations across China including maternity insurance into the medical insurance.

Generally equal benefits are available to Chinese and foreign employees under the social insurance system. Retirement benefits are available after employees have reached the statutory retirement age (55 for women, 60 for men), provided contributions were paid for at least fifteen (15) years and retirement benefits can be paid even if the beneficiary has left China.

Contributions to the PRC social security are largely non-refundable, irrespective of whether foreign staff claimed benefits or not, whereby some exceptions apply: Foreigners who permanently leave China can ask for a refund of their employee contributions to the pension insurance allocated to the employee's personal account. Also, the portion of medical insurance contribution allocated to the personal account can also be continuously be refunded.

**Confidentiality Provisions:** Under PRC labour laws, confidentiality obligations may only be applied in regard to trade secrets and intellectual property of the employer. While it may be comparatively easy to determine the scope of intellectual property owned and/or legally utilised by an employer, it may be more difficult to determine in each and any case what constitutes a trade secret of any given employer. According to Art. 9 PRC Anti-Unfair Competition Law, a trade secret refers to "the technical information and business information that are not known to the public and have commercial value and for which corresponding confidentiality measures have been taken by their rights holders." Thus, it is crucial for the employer to ensure that all confidential information as defined in the labour contract and related internal rules and regulations is subject to measures by which the employer attempts that such information is kept secret. Otherwise, unless the respective confidential information constitutes intellectual property, according to the prevailing definition of "trade secrets" and pursuant to the new law, the relevant information may not be validly covered under a confidentiality obligation.

**Non-Competiton Obligations**: During the contract term, any concurrent employment is prohibited for the employees. For post-contractual periods, and subject to the relevant legal conditions, an employer may impose post-contractual non-competition obligations on certain categories of employees, i.e. the senior management, senior technical staff and other staff bearing the obligation of confidentiality. A "non-competition obligation" is specifically defined by law as an obligation not to: a) be employed by any entity who manufactures, operates or engages in products or business that fall within the same category as those of the employer; or b) engage on his own behalf in the manufacture or operation of products or business that fall within the same category as those of the employer. The post-contractual non-competition period must not exceed two (2) years after the termination or expiry of the employment contract and requires that the employer shall pay a monthly compensation during the post-contractual non-competition period of at least 30 percent of the average monthly salary of the last twelve (12) months before the termination of the contract.

**Labour Termination:** An employer and employee may terminate a labour contract upon agreement. In addition, an employer or employee may terminate a labour contract unilaterally before the end of its term under the circumstances described below (these are – based on general legal understanding – the ONLY admissible termination reasons and cannot be opted out based on a bilateral agreement and cannot be extended based on a bilateral agreement, at least not to the detriment of the employee).

a) An **employer** may terminate a labour contract before the end of its term with immediate effect:

- when the employee is proved to be unqualified during the probationary period;
- when the employee has seriously violated labour discipline or the rules and regulations of the employer validly implemented with the involvement of the employees or their representatives (employee's representative council or trade union);
- when the employee has committed serious dereliction of their duties or has practiced favoritism or other irregularities resulting in serious losses being incurred by the employer;
- when the employee has concurrently established an employment relationship with another employer that materially affects the performance of their duty with the primary employer, or the employee refuses to rectify the situation after being notified by the employer or
- when the employee has been accused of criminal liability.

b) An **employer** may terminate a labour contract before the end of its term by providing thirty (30) days' notice:

- if, after undergoing a period of medical treatment, the employee with an illness or non-work-related injury is unable to perform their original work duties and is also unable to perform another job arranged by the employer;
- when the employee is not competent to perform their duty and remains unqualified even after training or being moved to another post or
- when a labour contract can no longer be implemented due to major changes in the objective conditions that were relied on as the basis for concluding the labour contract and an agreement to amend the labour contract cannot be reached by the employer and employee through consultation.

c) If any of the following circumstances make it necessary to reduce the workforce by at least 20 persons, or at least ten percent of the total number of the enterprise's employees, the **employer** may reduce the workforce subject to statutory procedure:

- restructuring pursuant to Enterprise Bankruptcy Law;
- serious difficulties in production and/or business operations;
- the enterprise switches production, introduces new major technical innovation or adjusts its method for business operation and, after amendment of the labour contract, it is still necessary to reduce the workforce;
- a major change in the objective economic circumstances relied upon when the labour contract was executed renders performance impossible;

If an employer needs to reduce staff under such a situation, the labour union or all staff must be informed thirty (30) days in advance. Staff may be reduced after the opinions of the labour union or all staff have been solicited and a report has been made to the labour authority.

When laying off employees, the employer must give priority to retaining employees who:

- have concluded with the employer a fixed-term labour contract with a "relatively" long term;
- have concluded with the employer a non-fixed-term labour contract;
- are the only ones in their families to be employed and whose families have an elderly person or a minor for whom they need care.

d) An **employee** may terminate a labour contract before the end of its term with immediate effect without prior notice to its employer if:

- the employer forces the employee to work through means of force, threat or illegal restriction of personal freedom;
- the employee is instructed in violation of rules and regulations or is peremptorily ordered by their employer to perform dangerous operations that threaten their personal safety;
- the employer fails to provide the labour protection or working conditions specified in the labour contract;
- the employer fails to pay labour remuneration in full and on time;

- the employer fails to pay social insurance premiums for the employee in accordance with the law;

- the employer has rules and regulations that violate laws or regulations, which harm the employee's rights and interests;

- the employer disclaims its legal liability or denies the employee's rights in the labour contract;

- the employer violates the mandatory provisions of any law or administrative regulation, e.g., refuses to pay an employee overtime or pays the employee below the local minimum wage;

- the employer causes the labour contract to be invalid due to (i) use of coercion, deception or taking advantage of the employee's difficulties to make the employee sign the labour contract; (ii) a disclaimer of the employer's legal liability or denial of the employee's rights; or (iii) a violation of mandatory legal provisions.

e) An **employee** may without any reason terminate a labour contract before the end of its term by providing thirty (30) days' prior notice. Within the probation period, an employee may terminate a labour contract by providing three (3) days' prior notice.

A labour contract becomes invalid if a party is forced to conclude or amend the labour contract contrary to its true intent by means of fraud, coercion or by taking advantage of such party's vulnerability.

**Economic Compensation (also referred to as Severance Payment)**: Severance payments for labour termination must be made in certain cases stipulated by law (e.g. unilateral termination by the employer (other than in cases warranting immediate termination), mass dismissals, unilateral termination by the employee with immediate effect, mutual termination agreements etc.).

Severance payment shall be paid on the basis of the number of years a person works with the given employer, the rate being one (1) month's salary for the work of one (1) full year. If an employee has worked for six (6) months or more but less than one (1) year, the time shall be calculated as one (1) year; and if he has worked for less than six (6) months, he shall be paid half of his monthly salary as severance payment.

Severance payment must be paid in one lump-sum and latest on the effective date of termination.

If the actual monthly salary of the employee who shall be dismissed equals or is higher than triple the local average monthly salary at the seat of the employer, then triple of the local average monthly salary ("**CAP**") shall be used as basis to calculate the statutory severance payment. If the actual average monthly salary of the staff to be terminated is lower than the CAP, the actual average salary as paid during the past twelve (12) months prior to termination would serve as basis for calculation of statutory severance payment.

If the termination is due to medical reasons (which are narrowly defined), the employer must pay an additional medical subsidy that amounts to at least six (6) months' salary and, in cases of severe or fatal illness, such amount is increased by 50 percent to 100 percent.

Note: For contracts which have entered into prior to 1 January 2008, special rules apply which may deviate from the above rules.

**Labour Disputes**: Usually an initial attempt is made to settle disputes internally through mediation by a labour union and representatives of the employee and employer. If no settlement can be reached, a labour dispute arbitration commission will adjudicate the dispute. Time limitations that depend on the nature of the case apply for seeking arbitral decisions. A party to a labour dispute that disagrees with the arbitral award may in certain cases file a suit at the People's Court.

## 4. Trade Unions

Employees of PRC companies (including FIEs) are entitled to set up a trade union. If there are fewer than 25 employees, the PRC Trade Union Law provides for a single representative. If there are more than 25 employees, a union committee can be established.

Irrespective of whether a company has established a trade union, it shall pay two percent of the aggregate salaries paid by the company to the trade union fund (such contributions can then be used for eligible employee activities/benefits). The collection of trade union funds is generally handled through the local tax bureaus.

In recent years, the All-China Federation of Trade Unions and local trade union federations have strongly promoted the establishment of trade unions in enterprises, including FIEs, and often rather aggressively request the establishment of trade unions. Violations of trade union laws can trigger lower grade valuations in the various social enterprise credit system qualification regimes (e.g. according to the Measures for Grade Evaluation of Corporate Labour Security and Law-Compliance and Integrity, enterprises are classified into A, B or C level).

Labour union representatives are entitled to attend company board meetings and comment on issues such as salaries, social benefits, work safety and social insurance (without however having a voting right in such meetings).

Employers are obliged to notify trade unions in advance in case of staff dismissals. When an employer is to terminate a labour contract unilaterally, it shall give the trade union advance notice of the reasons therefor. If the employer violates laws, administrative regulations or the labour contract, the trade union has the right to demand that the employer rectify the matter. The employer shall study the trade union's opinions and notify the trade union in writing as to the outcome of its handling of the matter. If the trade union considers the termination of a labour contract unjust, it has the right to express its opinion, and the employer is required to consider it. The employer must substantiate in writing to the trade union the reasons for permanent dismissal. Courts have found that an enterprise that does not have its own trade union must give such substantiation to the district or municipal labour union. A trade union may also "support and assist" employees in the resolution of labour disputes.

There is no law permitting employees to strike.

## 5. Employee Handbooks (Internal Rules and Regulations)

According to PRC laws and regulations, all employers shall have a so-called Employee Handbook, i.e. guidelines for labour-related matters that apply to all and any staff of the employer. Legally speaking, effectively implemented Employee Handbooks are applicable to all employees of the company, including the senior management personnel. Any individual agreement in a labour contract overrides the more general provisions of the Employee Handbook.

These Employee Handbooks are a vital piece of HR management in China due to the following reason: Chinese labour legislation restricts the causes for an employer to dismiss an employee. A material breach of internal rules and regulations of an employer (such as the Employee Handbook) is one of the statutory reasons for dismissal without prior notice and thus it is generally desirable to subject all employees to such rules. However, Chinese labour law does not specify the scope of material breach and allows each employer to provide definitions thereof in their own internal rules and regulations, e.g. an Employee Handbook. Moreover, there is no legal definition of internal rules and regulations and an Employee Handbook is only one example. Internal guidelines are also regarded as internal rules and regulations of an employer.

In order to validly implement internal rules and regulations that have a direct bearing on the interests of the employees (such as remuneration, working hours, rest and vacation, work safety and hygiene, insurance, benefits, employee training, work discipline and work quota management, etc.) a democratic implementation process involving all employees or their representatives is required. Such statutory implementation process of internal rules and regulations such as an Employee Handbooks generally includes i) discussions with all the employees or employee representative congress (if any); ii) collection of comments made by all the employees or the employee representative congress; iii) discussion the comments with employee representatives or the trade union established within the Company (if any); iv) issuance of the final version to all the employees.


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