

China Knowledgebase

Hiring blueprint

Core employment practices

Chinese labour law emphasizes the protection of workers' rights, including mandatory employment contracts, adherence to minimum wage standards, and regulated working hours with overtime pay requirements. Employers are also obligated to provide social insurance, comply with strict termination procedures, and safeguard workers' rights to rest, leave, and non-discrimination in the workplace. **Freedom of Contracting**
Employment relationships must comply with statutory requirements, but both parties are free to negotiate terms within the law. Contracts cannot override employee protections established under the Labour Law or Labour Contract Law.

Priority of Employment Rights

Labour rights take precedence over conflicting contractual provisions. Minimum wages, work safety standards, and statutory leave cannot be waived or reduced by contract.

Employment Contracts

Written Contracts: Employment contracts must be in writing. Employers who fail to provide a written contract within one month of employment face penalties and must compensate employees with double wages.

Types of Contracts:

Fixed-term contracts: These are contracts where the start and end dates of the employment are predetermined and explicitly stated in the contract.

Open-term contracts: These are contracts without a defined end date.

Project-based contracts (valid for the duration of a specific task or project).

Probationary Period:

Duration depends on the contract length: in general probationary period goes from a minimum of 1 month to a maximum of 6 months. No probationary period allowed for contracts under 3 months or project-based contracts.

Working Hours

Standard Workweek: 8 hours/day, 40 hours/week (standard working time system).

Overtime: Overtime cannot exceed 3 hours per day or 36 hours per month.

Overtime pay rates:

150% for regular overtime.

200% for rest day overtime (if no compensatory leave is provided).

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300% for public holiday work.

Rest Periods:

Employees are entitled to at least one rest day per week.

Leave Entitlements

Annual Leave: Employees with more than one year of service are entitled to 5–15 days of annual paid leave, depending on years of service.

Sick Leave:

Leave duration and pay depend on local regulations and seniority, but generally ranges from 3 to 12 months. Pay is typically 60–80% of the local minimum wage.

Maternity and Paternity Leave:

Maternity leave: At least 98 days, with additional leave for difficult childbirth or multiple births.

Paternity leave: regulated only at regional or local level.

Termination of Employment

Notice Periods: Generally, a 30-day written notice is required for termination by either party.

Immediate termination is allowed for specific misconduct or legal violations.

Severance Pay:

Required for most terminations, calculated as one month's salary per year of service, capped at 12 months.

Grounds for Termination:

Employee misconduct or breach of contract, Redundancy due to company restructuring, End of a fixed-term contract, Mutual agreement between parties.

Workplace Safety:

Employers must provide a safe working environment and comply with national occupational health standards.

Training and Equipment:

Employers are responsible for training employees on safety protocols and providing necessary protective equipment.

Discrimination and Equal Treatment

Anti-Discrimination Laws: Discrimination based on ethnicity, race, gender, religion, or disability is prohibited.

Equal Pay:

Equal pay for equal work is a fundamental principle under Chinese Labour Law.

Collective Bargaining

Trade Unions: Employees have the right to join or form trade unions. Trade unions must be affiliated with the All-China Federation of Trade Unions (ACFTU).

Collective Agreements:

Employers and trade unions may negotiate collective contracts, which govern wages, working hours, and other terms. Collective contracts must be filed with local labour authorities for approval.

Salary Disbursement and Monthly Client Invoicing

Salary Payment Date: Employers must pay salaries on a fixed date each month as per the employment contract, no later than the 10th of the following month.

Salary Input:

Salaries must be calculated and recorded based on working hours, contractual agreements, and any applicable overtime laws. Payments are usually made in Chinese Yuan (RMB).

Invoicing Deadlines:

Employers are expected to issue invoices to clients for payroll processing and related services in accordance with the contract terms.

Payslips:

Employers are required to provide employees with detailed payslips each month, indicating gross salary, deductions (such as taxes and social security contributions), and net pay.

Minimum Wage

The minimum wage is determined regionally and is revised periodically. Employers must adhere to the local standards, ensuring foreign employees receive at least the set minimum wage applicable to their place of work. China's official minimum wage varies by region, with monthly rates ranging from 1,450 yuan to 2,690 yuan.

Pay Increases

Employers are encouraged but not mandated to provide annual salary increases, often tied to employee performance and company profitability. However, increases should be in line with contractual terms.

Reduction of Wages

Wages cannot be reduced arbitrarily. Any reduction must comply with Chinese Labour Law and require mutual consent in cases like reduced working hours or adjusted job responsibilities.

Social Security and Benefits

Mandatory Contributions: Employers and employees must make contributions to the Chinese social insurance system, which includes: Pension, Medical insurance, Unemployment insurance, Work injury and maternity insurance.

Pension System:

Foreign employees participating in China's social security system are eligible for pensions under the same rules as local employees, depending on their contributions. However, exemptions may apply based on bilateral agreements between China and their home country.

Labour laws

Legal framework

China's employment law framework is anchored in two primary legislative instruments: the Labour Law of the People's Republic of China (1995) and the Labour Contract Law of the People's Republic of China (2008, as amended in 2012). The Labour Law of 1995 was introduced to safeguard workers' legitimate rights and interests, establish orderly labour relations, and improve working conditions.

Among its core provisions, the law mandates that employment contracts must be executed in accordance with national labour standards. It regulates working hours, overtime, and rest periods, ensuring that employees are not subject to excessive work demands.

Additionally, it imposes requirements regarding wage payments, with specific rules on minimum wage levels and entitlements such as maternity leave, sick leave, and annual leave. Employers are further obligated to maintain a safe working environment, adhering to standards for occupational health and safety.

Mechanisms for dispute resolution, such as mediation and arbitration, are also embedded within the statute, providing legal avenues for addressing labour disputes. The Labour Contract Law of 2008, supplemented by the 2012 amendments, strengthens protections for employees, particularly with respect to the formation, performance, and termination of employment contracts.

It imposes stringent obligations on employers to formalize employment relationships through written contracts, which must be provided to employees within one month of commencement of employment, with penalties imposed for non-compliance.

The law also codifies rules governing the lawful termination of employment, affording employees enhanced protection from arbitrary dismissal, particularly those with long service records. Employers are required to contribute to social insurance schemes,

including pension, medical, unemployment, work injury, and maternity insurance, ensuring comprehensive welfare coverage for employees.

Furthermore, in the event of economic layoffs or restructuring, the law grants preferential treatment to employees with seniority or those belonging to protected categories, such as individuals with disabilities. Lastly, the law mandates that after two successive fixed-term contracts, an employer is obligated to offer the employee an open-ended contract, further ensuring job security.

Employment contract

Types of employment contract

The main type of contracts are the indefinite contract and the fixed term contract.

Fixed-term employment contracts

These are contracts where the start and end dates of the employment are predetermined and explicitly stated in the contract.

The length of employment is fixed, meaning that when the specified period expires, the employment relationship is automatically terminated unless both the employer and the employee mutually agree to extend or renew the contract.

This type of contract is commonly used when there is a clear need for an employee for a specific, limited period—such as in seasonal work, temporary projects, or covering for an absent employee.

Open-ended employment contracts

Unlike fixed-term contracts, open-ended contracts do not have a defined end date. Once signed, the employment relationship continues indefinitely until either party - employer or employee - takes lawful action to terminate the agreement.

Such contracts are typically used in situations where long-term employment is anticipated, providing more job security to the employee.

However, termination in these cases requires adherence to specific legal procedures, such as the provision of notice or the meeting of other conditions as set forth by Chinese labour law.

Content of an employment contract

An employment contract must include essential details such as names, addresses, job position, job description, and the contract duration. The contract must include the full legal name, address, and contact details of the employer and, if applicable, the legal representative acting on behalf of the company. This establishes accountability and clarity about the parties involved in the employment relationship.

It is essential to include the employee's contact details, such as their full name, address, and communication preferences.

The contract should define its duration, whether it is for a fixed term or indefinite. These terms offer transparency regarding the nature of the agreement and allow both the employer and employee to understand the longevity and obligations of the arrangement. Other important elements to consider are:

Position: The specific job title and role must be stated clearly. This ensures that the employee understands their responsibilities, duties, and the scope of their position within the organisation, which helps prevent misunderstandings.

Work location: The contract should specify the primary location where the employee will carry out their duties, as well as any potential for remote work or alternative locations.

Working hours: The number of hours and schedule that the employee is expected to work should be explicitly mentioned. Clearly defined working hours provide predictability for the employee and ensure compliance with labour laws.

Remuneration: The contract must outline the salary or wage, payment frequency, and any other compensation elements like bonuses or benefits.

Social insurance: Details about the employee's eligibility for social insurance, including health, pension, and unemployment coverage, must be included.

Working conditions and workplace safety protections: The employer must provide clear details about the working environment and measures taken to ensure health and safety compliance.

Oral, written, or electronic employment contracts

An employment contract must be documented in writing. To formalize and legally recognize an employment relationship between an employer and an employee, it is a mandatory requirement that the employer enters into a written employment contract with the employee.

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This contract must be signed within one month from the employee's commencement of work.

The employment contract is a crucial document that defines the terms of the employment, including job responsibilities, remuneration, benefits, and other essential details that govern the working relationship.

If an employer fails to sign a written employment contract within one month but does so within a year, they must compensate the employee by paying double their salary for the period without a contract.

If no contract is signed after one year, the law automatically presumes that the employer and employee have entered into an open-ended contract, providing the employee with permanent job security and stability, as the employment is no longer considered temporary or probationary.

Chinese law generally allows for employment contracts to be executed electronically, as long as the electronic signature satisfies the legal conditions outlined in the PRC Contract Law and the ESL.

Key requirements

Working hours

The standard working schedule consists of 40 hours per week, with eight hours per day. Employers are generally required to follow a standard working hour system, ensuring that employees work an average of no more than eight hours per day and 40 hours per week. Additionally, employers must provide their employees with at least one day off each week.

However, if the nature of the employer's business makes it impractical to implement the standard working hour system, a special working hour arrangement—such as a flexible or comprehensive working hour system—may be adopted, provided it is approved by the local labour authorities.

In cases of overtime, under the standard working hour system, extended work hours must not exceed three hours per day or 36 hours per month. Employers must compensate employees for overtime under the standard working hour system as follows:

- At least 150% of the employee's regular salary for extended hours worked on regular workdays;

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- At least 200% of the employee's regular salary for work performed on rest days (or the employer may offer time off in lieu);

- At least 300% of the employee's regular salary for work carried out on statutory public holidays.

Night work

Work performed between 10:00 PM and 6:00 AM is classified as night work, entitling the employee to additional compensation. Night work is typically defined as any work performed between 10:00 PM and 6:00 AM.

In China, the standard workweek consists of 40 hours, generally structured as eight hours per day with two days off. However, the inclusion of night shifts can introduce complexities to this arrangement.

Special regulations apply to specific groups: pregnant women and breastfeeding mothers are prohibited from being assigned to night shifts, and minors under the age of 18 are generally restricted from engaging in night work. Employees working night shifts are entitled to additional compensation as stipulated by the Labour Law of the People's Republic of China.

Night work typically requires an allowance or a percentage increase on the standard wage, commonly set at an additional 30% for the nighttime portion of the shift.

Breaks and types of leaves

Employees are entitled to a one-hour break during the workday and one or two days off per week. The law does not mandate specific requirements regarding the length or frequency of daily breaks.

However, employers may provide an unpaid break of up to one hour during the workday.

Employees are entitled to a minimum of one full rest day per week, typically observed on a Saturday or Sunday.

Chinese employees are entitled to the following types of leave:

Sick leave: Provides employees with time to recover from illness without the financial burden of lost income.

Maternity, paternity, and parental Leave (with full pay): Supports employees during the critical life stage of becoming parents, ensuring financial security while they focus on family responsibilities.

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Marriage leave (with full pay): Grants employees time to celebrate and manage the personal and logistical aspects of their wedding without financial concerns.

Bereavement leave (with full pay): Enables employees to take necessary time off to grieve and manage practical arrangements following the loss of a close family member.

Annual leave

In addition to the statutory public holidays, employees are entitled to a certain number of days of paid annual leave, depending on the length of cumulative service with all employers. Chinese employees are entitled to annual leave based on their cumulative work experience as follows:

- Less than 1 year of cumulative work experience: No statutory entitlement to annual leave.
- 1 to 10 years of cumulative work experience: 5 days of paid annual leave.
- 10 to 20 years of cumulative work experience: 10 days of paid annual leave.
- More than 20 years of cumulative work experience: 15 days of paid annual leave.

Employees who meet the following conditions are not entitled to annual leave:

- Those who take 20 or more days of personal leave within a year.
- Those who take sick leave for 3 months or more within a year.
- Those who take maternity leave exceeding statutory duration without working.

Also, holiday pay must be equivalent to the employee's average daily wage. Annual leave, determined by the employee's length of service, ranges from 0 to 15 days. Unused leave requires compensation at 200%, increasing to 300% if the leave is denied.

Public holidays

The official public holidays in China 2025:

January 1 (Wednesday) – New Year's Day

January 28 (Tuesday) to February 4 (Tuesday) – Spring Festival (Chinese New Year)

April 4 (Friday) to April 6 (Sunday) – Qingming Festival (Tomb-Sweeping Day)

May 1 (Thursday) to May 5 (Monday) – Labour Day

May 31 (Saturday) to June 2 (Monday) – Dragon Boat Festival

October 1 (Wednesday) to October 8 (Wednesday) – National Day and Mid-Autumn Festival

Note that some holidays may be adjusted with make-up workdays to create longer holiday periods.

Statutory public holidays include New Year's Day, Chinese New Year, and other national holidays, with a minimum of 11 public holidays per year.

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However, China employs a "swapped days" system, where employees work on weekends surrounding a 3-day national holiday to extend it into a full week off.

An employer unit shall pay wages in accordance with the law to its workers for official public holidays, for marriage or bereavement leave and for the period of participation in social activities in accordance with the law.

Salary

In 2025, the official minimum wage across China varies significantly depending on the region, with monthly wages reaching up to 2650.00 yuan.

This equates to approximately 370 U.S. dollars. The differences in wage levels are reflective of the diverse economic conditions across the country's provinces and cities.

By law, local governments at both the regional and city levels are required to reassess and adjust the minimum wage rates at least once every two years to keep up with economic growth, inflation, and cost of living changes.

Wages shall be paid in accordance with the principle of "to each according to his work" and based on equal pay for equal work.

An employer must pay an employee a monthly salary no lower than the local minimum monthly wage standard specified by the people's government in the place where the employer is located.

Wages must be paid to employees in cash on a monthly basis. No deductions or delays in payment are allowed without a valid reason.

This is usually updated annually. Moreover, the employers must withhold individual income tax from an employee's salary pursuant to the Individual Income Tax Law of PRC.

Sick leave

The employees are entitled to sick leave, generally from a minimum of three months to a maximum of 12 months. Employees are entitled to sick leave if they suffer from illnesses or non-work-related injuries and cannot work as a result. A medical certificate from a licensed doctor or hospital is usually required.

The length of paid sick leave depends on the employee's length of service. The regulation provides that:

- Employees with less than ten years of service are entitled to 3-6 months of sick leave.
- Employees with more than ten years of service may get 6-12 months of sick leave.

Typically, sick leave pay is calculated as a percentage of the employee's normal salary and

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is usually between 60% and 80%, though this varies depending on local regulations and the employer's policies.

If an employee is severely ill or suffers from a long-term condition, they may be granted a longer period of medical treatment beyond standard sick leave, which must be certified by a doctor.

Generally, employers are not allowed to terminate employees during a legally prescribed medical treatment period, though termination may be possible in cases of major violations or if the employee is found unfit to return to work after their recovery period.

Parental leave

Employers in China may need to observe parental and elder care leave, which varies by region, granting eligible employees paid leave for childcare or dependent care based on local regulations. Parental leave rights vary based on local regulations. According to the Population and Family Planning Law of the People's Republic of China (PRC), amended in 2021, the national government encourages local authorities to establish parental leave if conditions allow, resulting in differences across regions.

In areas like Beijing and Shanghai, parental leave - often referred to as childcare leave - is available to eligible employees. Under these regional policies, parents are entitled to five working days of fully-paid parental leave annually until their child reaches three years of age. This entitlement accrues yearly based on the birthdate of the employee's child rather than the calendar year, allowing parents to take leave specific to the child's birthdate each year.

These provisions depend on regional legislation, so the availability and specifics of parental leave may differ from one area to another. Employees with caregiving responsibilities for young children or elderly parents may have rights to specific leave, though entitlements vary based on the dependant and the locality. Employees responsible for young children under three years of age are eligible for the parental leave mentioned above, which is available under both national laws and various local regulations.

For employees who are the primary caregivers of elderly dependants, some provinces and municipalities offer elder care leave to accommodate their caregiving responsibilities.

For instance, in Beijing, an employee who is an only child is entitled to up to 10 working days of fully-paid elder care leave per calendar year if they need to care for a parent with significant health issues, such as illness, injury, or disability that requires nursing care. This elder care leave is specific to regions where such local laws apply, so the entitlement and conditions can vary depending on the location.

Paternity and maternity leave

Eligible female employees are entitled to 98 days of maternity leave (extendable in certain cases) and receive a maternity allowance if insured. Paternity leave

There is no unified national legislation on paternity leave for male employees in the PRC. Paternity leave is only stipulated in local regulations on a municipal or provincial level.

Maternity leave duration

Eligible female employees in China are entitled to 98 days of maternity leave, with 15 days available pre-delivery. Additional leave may be granted in special cases (15 extra days for complications or each additional child in multiple births).

Local regulations often extend this leave, with cities like Beijing and Shanghai providing up to 158 days. Employees who experience a miscarriage are entitled to 15 days (if within four months of pregnancy) or 42 days (if after four months).

Pay and benefits during maternity leave

During maternity leave, eligible employees with maternity insurance receive a maternity allowance from the insurance fund. If this is less than her regular salary, the employer must cover the difference. Maternity insurance also reimburses medical expenses related to childbirth or miscarriage. If the employer failed to provide insurance, they must cover both salary and medical expenses.

Rights upon return to work

Returning employees with a child under one year cannot be assigned extended hours or night shifts and are entitled to one hour of daily breastfeeding time (plus an extra hour per additional child). Employers must provide facilities like rest and breastfeeding rooms if they employ a large number of women. Additionally, employees in their nursing period are protected from termination in specific cases, such as incompetency or mass layoffs.

Termination

Methods of employment termination

The preferred method for contract termination is through a mutual termination agreement. However, resignation and dismissal are also governed by the provisions of the Chinese Labour Code. At-will employment is not allowed under PRC labour law.

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An employee has the right to resign without providing a reason by submitting written notice to the employer. However, the employer may only terminate the employment contract on specific legal grounds.

Under PRC labour law, the statutory grounds for terminating an employment contract include:

- Mutual termination: An employer and employee may mutually agree to terminate the employment contract at any time.
- Resignation: the employee freely decides to dismiss. No reasons required.
- Dismissal by the employer: this is possible only with a justified reason and evidence. An employee may terminate the employment contract by providing 30 days' written notice. During the probation period, the required notice period is reduced to three days.

An employee has the right to terminate the employment contract immediately if the employer:

- Fails to ensure a safe working environment,
- Does not pay wages in full and on time,
- Fails to make social insurance contributions as legally required, or
- Enforces rules or regulations that significantly impair the employee's rights and interests by not aligning with legal standards.

Ordinary dismissal by the employer

An employer may terminate an employment contract immediately for employee misconduct or unmet probationary requirements, or with 30 days' notice (or an extra month's salary) in cases of non-work-related illness, lack of competence post-training, significant contract changes, or in layoffs following labour consultation and authority approval. An employer has the right to immediately and unilaterally terminate an employment contract if the employee has committed serious misconduct or fails to meet the recruitment requirements during the probation period.

Immediate termination is reserved for cases where the employee's actions or qualifications fundamentally breach the terms of employment or misalign with the expectations established upon hiring.

Dismissal may also occur for low performance or critical errors committed, provided the employer can prove this with clear evidence. In other situations, an employer may

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terminate an employment contract by providing 30 days' written notice or offering an additional month's salary in lieu of notice.

These circumstances include:

- When the employee is sick or injured for non-work-related reasons and cannot resume their original position or any other role assigned by the employer after the legally stipulated medical treatment period has expired;
- If the employee lacks the competence necessary to fulfill the role, even after additional training or role adjustment; or
- When significant changes have occurred that impact the terms on which the employment contract was originally based, rendering the contract unworkable, and the parties cannot agree on appropriate modifications.

In certain cases, the employer may also initiate layoffs, provided they consult with the labour union or the employees and submit a layoff plan to the relevant labour authorities.

Notice period and challenging the dismissal

The statutory minimum notice period required by law is 30 days. The statutory minimum notice period is 30 days.

Alternatively, the employer may choose to provide one month's salary instead of notice.

If a longer notice period has been agreed upon between the employer and employee, the employer is required to honor it.

For collective redundancies, a 30-day notice period is mandatory.

In the case of MTA, no statutory notice period is required. Aside from the statutory grounds for termination outlined above, any unilateral termination will be deemed wrongful.

In cases of wrongful termination, an employee may request reinstatement. A dismissed employee has the right to request labour arbitration within one year. Upon the employee's request, the labour arbitration commission may instruct the employer to reinstate the employee. If the employee opts for financial compensation instead of reinstatement, or if reinstatement is impractical, the employer is required to pay the employee twice the statutory severance amount as compensation for the unjustified termination.

If the employee does not wish to continue working for the employer or if reinstatement is not feasible, the employer is obligated to provide compensation to the employee amounting to twice the legally prescribed severance pay.

Rights and obligations of unemployed persons

Employees dismissed involuntarily after contributing to social insurance for at least one year may qualify for regional unemployment benefits for 12 to 24 months, along with job-seeking support services. Under Chinese labour law, employees dismissed due to circumstances beyond their control – such as layoffs or company restructuring – may qualify for unemployment benefits if they meet certain requirements.

To be eligible, they must have contributed to the social insurance system for at least one year before their dismissal, and their job loss must be involuntary.

Additionally, they need to register as unemployed with their local Human Resources and Social Security Bureau, typically within 60 days of leaving employment. The amount of unemployment benefits varies by region but is usually set around the local minimum wage to provide basic financial support during the job search.

Benefits are available for a period of 12 to 24 months, depending on the length of the employee's contributions, with longer contributions allowing for a longer benefit period.

To apply, dismissed employees must submit proof of their termination, complete a formal application at their local employment service center, and, in many areas, participate in job-seeking workshops to continue receiving benefits.

Local authorities also frequently offer job placement services, vocational training, and subsidies to help individuals re-enter the workforce.

Severance pay

Employers must provide severance pay to employees upon mutual termination at the employer's request, unilateral termination by the employee due to employer fault, or unilateral termination by the employer without employee fault, calculated based on the employee's length of service. An employer is required to provide severance pay to an employee in the following circumstances:

- When termination is mutually agreed upon at the employer's request,
- When the employee unilaterally terminates due to the employer's fault, or
- When the employer unilaterally terminates without cause attributed to the employee (as outlined previously).

The monthly salary for severance purposes is defined as the average monthly salary earned during the 12 months preceding the termination of the employment contract. If an employee's monthly salary exceeds three times the local average monthly salary from the previous year, they will be entitled to severance pay capped at three times the local

average monthly salary, with a maximum of 12 years considered for the calculation of severance pay. The severance amount is based on the employee's length of service with the employer, calculated as one month's salary for each complete year of service. For clarity, please refer to the table below:

- Less than 6 months: 0.5 months' salary;
- At least 6 months and up to 12 months: 1 month's salary;
- More than 12 months and less than 18 months: 1.5 months' salary;
- At least 18 months and up to 24 months: 2 months' salary.

Additional items

Probationary period

The length of the probationary period depends on the duration of the employment contract, in general from a minimum of 1 month to a maximum of 6 months. An employer and an employee may mutually agree upon only one probation period during the course of their employment relationship.

This probation period serves as an essential time frame during which both parties can evaluate the suitability of the employment arrangement.

The maximum length of this probation period is determined by the duration of the employment contract.

In cases where the employment contract is fixed-term for 3 years or more, or if it is an open-ended contract, the probation period must not exceed 6 months. This extended probationary period is designed to provide ample time for both parties to thoroughly evaluate the employment relationship and make informed decisions about its continuation. For employment contracts that are established for a term of no less than 3 months but less than 1 year, the probation period must not exceed 1 month. This relatively brief probationary timeframe allows the employer to assess the employee's performance and compatibility within the organisation while also providing the employee with an opportunity to evaluate their fit within the role and the company culture.

If the term of the employment contract is no less than 1 year but less than 3 years, the probation period can extend to a maximum of 2 months. This longer duration allows for a more comprehensive assessment, giving both the employer and the employee the chance to better understand their respective roles and responsibilities.

Intellectual property rights

Intellectual property rights in employment law generally stipulate that any IP created by an employee during work is owned by the employer, with provisions for employee remuneration and recognition, protection of trade secrets, and contractual agreements governing IP ownership and confidentiality. Intellectual property (IP) rights in employment law are governed by various legal provisions that address the ownership and protection of IP created by employees.

Generally, any intellectual property developed by an employee during their work is owned by the employer, including inventions, designs, and works of authorship. This ownership principle is typically outlined in employment contracts and company policies.

The Patent Law of the People's Republic of China (PRC) states that inventions related to the employer's business are owned by the employer unless otherwise agreed. Employees are entitled to rewards or remuneration for inventions that bring economic benefits to the employer, and they may seek recognition for their contributions even if the employer holds the rights to the IP. Additionally, the Anti-Unfair Competition Law protects trade secrets, which employees may create or handle.

Employers are required to implement measures to protect confidential information and prevent the disclosure of trade secrets. Many employers utilise non-disclosure agreements (NDAs) to safeguard sensitive information.

Employment contracts often include clauses defining IP ownership, rights to inventions, and confidentiality obligations, along with non-compete and non-solicitation clauses. Disputes over IP rights can be resolved through various mechanisms, including mediation and arbitration.

As China continues to reform its IP laws, understanding the relationship between IP rights and employment law is essential for both employers and employees to ensure compliance and protection of their rights.

Employee data privacy

The PRC Personal Information Protection Law ("PIPL") mandates employers to comply with data protection regulations when handling employee information, including obtaining consent for cross-border data transfers and conducting reasonable pre-employment checks, while allowing monitoring of work-related communications and regulating social media use during work hours.

Employees have the right to access their personal information held by employers.

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The PRC Personal Information Protection Law (“PIPL”) provides clearer guidelines on processing personal information, requiring employers as data processors to comply with the PIPL and other data protection laws when handling employee data.

Key requirements for cross-border data transfers include obtaining informed consent, entering standard contracts, and conducting impact assessments.

The Measures for the Standard Contract for Outbound Transfer of Personal Information, effective June 1, 2023, outline how to implement these contracts, with compliance due by November 30, 2023.

While employers may conduct reasonable pre-employment checks, including criminal record checks, they should obtain informed consent first.

PRC Criminal Law mandates employees to disclose their criminal records, with exceptions for those under 18 at the time of the offence.

Monitoring of work-related emails and computer systems is permissible if justified, given employees' lower privacy expectations at work.

Employers can restrict personal social media use during work hours and may take disciplinary action for misuse that violates company policies.

Restrictive covenants

Prohibition of competition

Under PRC Labour Contract Law, employers may enforce a 24-month post-termination non-compete clause for senior or confidential employees, requiring compensation of at least 30% of the employee's average monthly salary, with liabilities imposed for any breaches. Under the PRC Labour Contract Law, employers and employees are permitted to include a post-termination non-compete clause within a labour contract or confidentiality agreement.

Such clauses are generally applied to employees in senior management positions, specialized technical roles, or others who are entrusted with maintaining the company's confidentiality.

The maximum duration for enforcing a non-compete restriction is capped at 24 months. During this period, employers are legally obligated to provide compensation to the employee for adhering to non-compete terms following the termination of employment.

Should an employee breach these terms, the employer has the right to impose the agreed-upon liabilities for non-compliance.

According to the Interpretations of the Supreme People's Court on Issues Relating to Laws Applicable for Trial of Labour Dispute Cases (I), the default standard for non-compete compensation is 30% of the employee's average monthly salary. This compensation framework aims to balance the rights and responsibilities of both the employer and employee, ensuring fair treatment during the non-compete period.

Remote working

Remote working policy

In China, clear remote work policies in employment contracts, specifying location, hours, communication expectations, and documenting any changes in writing, are essential to ensure compliance and prevent disputes. In China, employment contracts or company policies must provide explicit details regarding remote work arrangements to prevent misunderstandings and ensure compliance with local laws.

Remote work policies should carefully address various elements that contribute to a clear and functional working relationship.

Employers are encouraged to specify the approved remote work location, set clear working hours, and outline expectations for communication and responsiveness.

These guidelines foster a structured and transparent framework, supporting both productivity and alignment with regulatory requirements. Additionally, any modifications to employment terms that relate to remote work should be documented and mutually agreed upon by both parties in writing.

This practice is essential for avoiding potential disputes and ensuring that both employer and employee are fully aware of their responsibilities and obligations.

By maintaining comprehensive records of agreed-upon changes, employers can promote clarity and trust within their remote work arrangements.

Responsibilities within a remote work arrangement

Remote work arrangements require employees and employers to meet tax and social security obligations, including Individual Income Tax (IIT) compliance and contributions to essential social security programs, based on the employee's residence. Remote work arrangements in China involve critical tax and social security obligations that both employers and employees must carefully consider.

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Despite working remotely, employees in China are still required to comply with the Individual Income Tax (IIT) regulations and contribute to standard social security programs, regardless of their physical work location.

Typically, individual income tax in China is calculated based on an employee's place of residence, while social security contributions encompass several key areas: pension, medical insurance, work-related injury insurance, unemployment insurance, and maternity insurance. Each of these categories is mandatory and contributes to the comprehensive social safety net for employees working within China.

For employers, maintaining compliance with these financial obligations is essential to meet China's legal and regulatory standards for remote workers.

By ensuring that all tax and social security contributions are correctly managed, employers can reduce potential risks associated with non-compliance, support their employees' access to essential social benefits, and uphold their responsibilities within China's regulatory framework.

Health and safety at home

To ensure the health and safety of Chinese employees working from home, employers should promote ergonomic workspaces, focus on mental well-being, comply with labour laws, protect data security, and encourage regular breaks while providing access to wellness resources. Ensuring health and safety at home for Chinese employees is increasingly important as remote work becomes more prevalent.

Employers should promote the establishment of dedicated workspaces equipped with ergonomic chairs and desks that are properly adjusted to minimize physical strain.

Additionally, maintaining clear workspace guidelines is essential; keeping work areas tidy and organized helps prevent accidents, and considerations for fire safety and emergency exits are vital, especially in densely populated environments.

Regular check-ins, virtual mental health resources, and flexible working hours can help employees maintain their well-being.

Employers must also adhere to Chinese labour laws by implementing clear health and safety policies and providing guidance on how to report injuries.

Cybersecurity and data protection are also key components of a safe work environment. Encouraging employees to take regular breaks and offering access to online health consultations or wellness programs can further support their health, especially for those working remotely in the long term.