



Labour laws in China

It is critical for European SMEs doing business, or planning to do business, in China to understand China's labour laws. The overall design of the legislation is to ensure and protect the rights of employees. This report highlights the key points of China's labour laws.

1. Main laws and regulations

- Labour Law of the PRC - 1 January 1995
- Labour Contract Law of the PRC - 1 January 2008
- Mediation and Arbitration of Labour Disputes Law of the PRC - 1 May 2008
- Employment Promotion Law of the PRC - 1 January 2008
- Implementation Regulations of the Labour Contract Law of the PRC - 18 September 2008
- Regulation on Annual Paid Vacation of Employees - 1 January 2008
- Regulation on the Public Holidays for the National Annual Festivals and Memorial Days - 14 December 2007

2. Labour contract

a. Written form

An employer must sign a written labour contract with its employee within one month after the commencement of the employment. Failure to conclude a written labour contract with an employee within this period shall cause the employer to be liable for twice the salary of the employee. If no written contract is obtained within a year of commencement of work, in addition to being liable for twice the salary, the employment relationship will be deemed to have established a permanent employment relationship.

b. Term of contract

The Chinese law allows for three kinds of contracts based on the employment term: fixed-term, open-ended and project-based. A fixed-term contract has an agreed upon termination date while an open-ended contract has no termination date. A project-based contract has a termination date based upon completion of the project or task.

The Chinese law requires an employer to enter into an open-ended labour contract with its employee where:

- The employee has been working for the employer continuously for 10 years;
- Two fixed-term contracts have already been completed.

Companies employing workers in China must be well aware of the legal consequences of handling each of these kinds of contracts.

c. Mandatory content

The following specifications are required in the labour contract:

- Name, domicile and legal representative or main person in charge of the employer;
- Name, domicile and resident ID card number or other effective ID certificate number of the employee;
- Term of contract
- Job description and work place
- Working hours, rest and vacation
- Remuneration
- Social insurance
- Labour protection, working conditions, protection against occupational hazards.

3. Probation period

The maximum probation period that can apply to an employee's contract depends on the term of the contract:

Term of contract	Probation period
< 3 months, project-based contract	--
>3 months, <1 year	≤ 1 month
>1 year, < 3 years	≤ 2 months
≥3 years	≤ 6 months

The Chinese law expressly clarifies that only one probation period may apply to a specific employee. Conservatively, this could mean that an additional probation period could not be applied even if an employee returns to a company after a period working for another employer or if the employee is assigned to a new position.

The Chinese law also requires employers to pay employees wages during the probation period, which may not be less than the lowest wage for the same position or 80% of the wages provided for in the labour contract, whichever is lower.

4. Working time and leave

a. Working time

China has established a standard working hour system wherein the employees shall work for no more than 8 hours a day and for no more than 40 hours a week on average.

An employer has to pay employees additional wages in accordance with the following standards, in any of the following cases:

- Wage payments to employees in an amount of up to 150% of their wages if the employees are required to work longer on weekdays;
- Wage payments to employees in an amount of up to 200% of their wages if no rest is arranged post requiring employees to work on weekends;
- Wage payments to employees in an amount of up to 300% of their wages if the employees are required to work on public holidays.

Those companies who may not undertake standard working hours due to characteristics of work or business operation may implement a special working hour system upon approval of the relevant authorities, for instance flexible working hours. Under a flexible working hour system, employees are not subject to a time limit of the above-mentioned daily and monthly working hours, and the employer is not obliged to pay employees additional wages for overtime. However an employer is only allowed to implement a flexible working hours system for a certain group of employees, including senior managerial personnel, salesmen, etc.

b. Paid annual leave

According to Chinese law, employees who have been working for a consecutive period of more than one year shall be entitled to paid annual leave. The annual leave of an employee depends on his/her cumulative working years since he/she started to work:

Term of employment	Annual leave
< 1 year	--
≥ 1 year, < 10 years	5 days
≥ 10 years, < 20 years	10 days
≥ 20 years	15 days

The law and regulation only established minimum requirements on annual leave. Companies can grant their staff more annual leave should they wish. As a rule, employees of foreign companies have more annual leave than stipulated by law.

c. Sick leave

Employees shall be entitled to a period of medical treatment of 3 to 24 months due to illness or non-work related injuries in accordance with the cumulative working years since they started to work and the length of their service in the current company.

Years of working experience	Years of consecutive service with the current employer	Medical treatment period
< 10 years	< 5 years	3 months
	≥ 5 years	6 months
≥ 10 years	< 5 years	6 months

	≥ 5 years, < 10 years	9 months
	≥ 10 years, < 15 years	12 months
	≥ 15 years, < 20 years	18 months
	≥ 20 years	24 months

With regards sick leave wages, the law and regulation only established a minimum amount, so the employer could pay more if he/she wishes. Under national law, the minimum amount of sick leave wages is 80% of the minimum wages required by local regulation.

d. Marriage leave

In case of marriage of an employee, the employer must provide leave of 3 days to the employee. In addition, under family planning regulations in some locations, those who enter into late marriage may enjoy leave as follows:

	Condition	Entitlement
Normal	First marriage	3 days
Late marriage	Male ≥ 25 years, Female ≥ 23 years, First marriage	In some locations: 7 additional days

e. Maternity-related leave and breaks

According to Chinese law, maternity leave for female employees must be at least 90 days with 15 days before childbirth. In case of dystocia (complications in childbirth) an additional 15 days leave must be granted. In case of birth to more than one child at the same time, 15 days of maternity leave must be added for each additional child. In addition, the regulations on family planning in some locations provide for additional maternity leave of different periods of time. For instance in Beijing, a female employee shall be entitled to an additional maternity leave of 30 days if she gives birth to her first child at an age of 24 or over.

5. Termination of labour contract

The labour contract can be terminated upon mutual agreement between employer and employee.

Unilateral termination by the employer or the employee must be based on the conditions set forth under Chinese law. In case of unlawful termination of the employment contract by the employer, the employer is required to pay damages to the employee equivalent to twice the severance which would be payable by the employer if the employee had been lawfully terminated.

In the case of any of the following circumstances occurring to an employee, the employer may cancel the labour contract immediately without any compensation:

- The employee has proved to have not fulfilled the recruitment requirements during the probation period;
- The employee is deemed to have committed a serious violation of the internal regulations of

the employer;

- The employee has caused severe damages to the employer due to his/her grave negligence to duties or seeking private benefits;
- The employee has established a labour relationship with other employers at the same time which may seriously influence the completion of his/her work in the company or he/she refuses to make a correction after the employer has pointed it out;
- The labour contract was signed by the employer under false pretences or coercion from the employee. He/she would thus be subject to criminal liabilities according to the law.

In the case of any of the following circumstances, the employer may cancel the labour contract after it notifies the employee in writing 30 days in advance or after paying the employee an extra month's salary:

- The employee falls ill or is injured due to a non-work-related reason, and is not able to bear the original post after the expiration of the medical treatment period, nor can he/she assume any other position as arranged by the employer;
- The employee is incapable of doing his/her job and remains so upon training or upon adjustment to his/her post; or
- The objective circumstance on which the conclusion of the labour contract is based has changed significantly, which results in the labour contract being unable to be performed and no agreement concerning the modification of contents of the labour contract is reached after consultation between the employer and the employee.

a. Severance payment

Termination of the labour contract by the employer triggers severance payment. The usual rate of severance payment is one month of pay for each year of service up to 12 years. Any period of six months or more will count as a full month for this purpose. Half a month's salary will apply to any period of less than six months. If an employee's salary is greater than three times the average monthly salary published in the relevant location, 'one month's salary' will mean an amount equal to three times such published monthly average. In other words, for highly paid employees, the amount of severance pay will be reduced as it will not be based on their actual monthly salary.

An employer is required to pay its employee severance if the employment contract expires and is not renewed unless the employer has offered to renew the employment contract on the same terms and conditions but the offer is rejected by the employee.

6. Non-compete

Chinese law allows companies to conclude non-compete agreements with their staff, but only with senior management, senior technicians and individuals with access to commercial secrets. The non-compete period is limited to two years and a compensation for non-compete shall be paid. Other terms and conditions of the non-compete (scope, term, geographic restrictions etc.) are subject to negotiations between the employer and the employee.

7. Training agreement

Chinese law expressly permits companies to conclude training agreements with employees that require employees to remain with the company for a period of time following 'professional technical training' for which the company has paid. There are no definitions as to exactly what this means, although this probably excludes any normal form of training provided to an employee to enable him/her to do the job for which recruited and may mean only off-site professional or vocational training. In addition, if

employees breach such agreements they can only be required to pay damages amounting to the training expenses allocable to the unperformed portion of the lock-in period.

8. Employee handbook

An employee handbook is an essential tool for the management of human resources, as it includes the internal rules of the company. Chinese law requires that the company employee handbook shall be negotiated between the employer and employee representatives or labour union. Furthermore, the company must ensure that the employee confirms receipt of the employee handbook in writing, otherwise it could be a serious impediment to terminating an employee in serious breach of company rules.



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