

AUSSEN WIRTSCHAFT FACHREPORT CHINA

ARBEITSRECHT | LABOR LAW

INDIVIDUAL LABOR LAW
COLLECTIVE LABOR LAW
LABOR DISPUTE RESOLUTION
SOCIAL INSURANCE
FOREIGNERS

AUSSENWIRTSCHAFTSCENTER SHANGHAI
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1. ALLGEMEINES

Diese Publikation ist aufgrund der Zusammenarbeit mit einer Rechtsanwaltskanzlei in englischer Sprache verfasst.

Dabei handelt es sich um eine Einführung in das chinesische Arbeitsrecht, welche die wichtigsten und kritischsten Punkte in Zusammenhang mit Beschäftigungsverhältnissen in der Volksrepublik China beinhaltet. Gesetze und Regulierungen können sich in der Volksrepublik China (sowohl auf der Nationalebene als auch auf der lokalen Ebene) sehr schnell ändern. Bei konkreten Fragen wenden Sie sich bitte an das AußenwirtschaftsCenter Shanghai (E shanghai@wko.at). Die AußenwirtschaftsCenter in China können Ihnen Rechtsanwälte (ggf. auch mit Deutschkenntnissen) in China, Österreich und im deutschsprachigen Raum empfehlen.

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2. INDIVIDUAL LABOR LAW - RELATIONSHIP BETWEEN EMPLOYER AND EMPLOYEE

2.1. Establishment of an employment relationship

2.1.1. Legal Sources of PRC labor law

Labor law is an independent and special part in the legal system of the People's Republic of China ("PRC"). Broadly speaking, labor law refers to all the norms regulating labor relationships and includes both private law (e.g. law on employment contract) and public law (e.g. law on work safety). In a narrower sense, labor law refers to a piece of national level legislation, the *Labor Law of the PRC* itself.

The most important legal sources include national laws, implementing regulations thereof, local regulations and circulars, as well as interpretations of the Supreme People's Court, local People's Courts and labor disputes arbitration commissions.

- The PRC Constitution

The present effective version of the Constitution of the PRC (effective since 1982 and last amended in 2018) contains labor-law related regulations – at least in theory - in various points. PRC citizens have the constitutional right and obligation to work. Under the Constitution, employees also have a right to rest. A retirement system for all employees including officials in the government offices, and the subsistence of elder people are constitutionally provided for. The constitution grants the citizens the right to subsidies from the State and society when the citizens are old, sick or incapable of working. It also strengthens the special protection of women's rights, including the principle of equal pay for equal work among men and women.

The Constitution does not grant PRC employees a right to strike. Strike rights are legally questionable, because there are no laws explicitly allowing or prohibiting strikes, although strikes and other forms of joint protests are no more unusual in practice. It is currently controversial whether and how the right to strike should be regulated by law.¹

- The Labor Law of the PRC

The *Labor Law of the PRC* came into force in 1995 (last amended in 2018). It includes nationwide applicable general rules, including the right of employees on equal employment and participating in labor unions, rules on employment promotion, labor contract and collective contract. The labor law also provides for working and resting time, holidays and remuneration, occupational safety and health, protection of female and underage employees, vocational training, social security and social services. Because the labor relationships were only rudimentarily regulated in the labor law, it is supplemented through various other laws and regulations.

- The Labor Contract Law of the PRC

The *Labor Contract Law of the PRC* ("**Labor Contract Law**") effective since 2008 (last amended in 2012), contains detailed regulations of labor relationships. It currently plays the most important role in the HR practice. Based on the Labor Contract Law, a series of supplementary and implementing provisions and jurisdiction/arbitration interpretations and guidelines have been issued in the past years both on national and local level.

The conclusion, fulfillment and amendment of the labor contract are regulated in the Labor Contract Law in detail, as well as the termination of the employment relationship and other ending causes of the labor contract. The Labor Contract Law also contains special provisions for collective contracts, labor dispatch and part-time work.

¹ Fink/Huckenberg in express, Zeitschrift für sozialistische Betriebs- und Gewerkschaftsarbeit 7/11.

- **Other labor related laws**

Labor related provisions can be found also in the Employment Promotion Law, which includes provisions regarding the equal opportunities and rules against job discrimination. The Law on Mediation and Arbitration of Labor Disputes contains rules on the settlement of disputes between employers and employees out of courts, excluding the disputes connected to the collective contracts.

Other important laws and regulations include the Company Law, the Labor Union Law, the Social Insurance Law, the Work Safety Law, the Law on the Prevention and Control of Occupational Diseases, the Law on the Protection of Rights and Interests of Women, the Regulations on Implementation of the Labor Contract Law, the Regulations on Paid Annual Leave of Employees, the Tentative Provisions on Payment of Wages, the Provisions on the Medical Treatment Period for Employees Due to Illnesses or Non-Work-Related Injuries, the Special Provisions on Labor Protection for Female Employees, the Provisions on the Democratic Management of Enterprises, the Provisions on the Collective Contract, as well as the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Labor Dispute Cases, etc.

- **Various other regional and local regulations of the labor law**

A variety of other labor law related provisions exists at regional and local level, which we cannot list due to the volume of the text.

2.1.2. Labor relationship through labor contract

2.1.2.1. Minimum requirements for a labor contract

a) Start of Employment

The employment relationship starts when the employee starts working for the employer, regardless of whether at that time a written labor contract already exists or not.

b) Minimum content of a labor contract

The Labor Contract Law requires following minimum contents of the labor contract. In practice, they are usually supplemented by numerous other regulations, depending on the employee's position, the involved industry, and the overall HR structure in the company. The labor contract should at least contain:

- (i) Name, domicile, legal representative (or person in charge) of the employer
- (ii) Name, residence, identity card / passport number of the employee
- (iii) Term of the labor contract (see section 2.1.2.1.c below)
- (iv) Job description and place of work (see section 2.1.2.1.d below)
- (v) Working and resting time (see section 2.3.2 below), holidays (see section 2.3.4 below)
- (vi) Remuneration (see section 2.3.3 below)
- (vii) Social insurance (see section 5 below)
- (viii) Occupational safety and health, working conditions and work safety
- (ix) Other legally required aspects

The law also mentions other clauses as optional for a labor contract:

- (i) Probation period
- (ii) Training (and loyalty) agreements
- (iii) Confidentiality obligations
- (iv) Rules on additional insurance and other voluntary social expenses

c) Term of the labor contract

Labor contracts can be fixed-term or open-ended. The termination rules are the same in both cases, but a labor contract with at least one fixed-term gives the employer an additional option to end the contract through simple expiry. It is very common in practice, also in case of the employment of senior staff, to limit the period of the employment relationship with an initial term of one to three years. The duration of the labor contract affects the allowed length of the probation period (see below 2.1.2.4.b).

In certain legally specified cases, the employee can demand an open-ended contract, when he/she proposes or agrees with the extension of an existing contract and at the same time does not require a fixed-term contract, for example when the employee

- (i) works for the same employer consecutively for 10 years or longer,
- (ii) has already signed two consecutive fixed-term employment contracts after 2008 before the extension and none of the statutory exceptions exist.

IMPORTANT: If the employer unlawfully signs a fixed-term contract in the above cases, he/she is obligated to pay the employee double salary after the expiry of the first month of such contract, maximum for a period of eleven months. Afterwards the law constructs the existence of an open-ended contract.

According to an interpretation by the Chinese Supreme People's Court, the following circumstances are considered to fulfill the above-mentioned requirement of "two consecutive fixed-term employment contracts":

- The employer and the employee have agreed to extend the employment contract for a total of more than one year, and the extended term has expired.
- The employer and the employee have agreed that the employment contract will be automatically renewed upon expiry, and the extended term has expired.
- If the employee continues to perform his or her duties at the original workplace and in the original position as before, solely based on the arrangement of the employer, but the employer has merely changed the contractual partner for the employment contract while continuing to exercise control over the employee, and the fixed term has expired.
- If an employment contract is extended by other circumventing measures that violate the principle of good faith and the term expires.

IMPORTANT: According to the local regulations in some locations (e.g. Jiangsu Province), the employer must inform the employee in writing of his/her right to claim for an open-ended contract no later than one month before the expiry of the fixed-term contract.

Other types of labor contracts include part-time work (see section 2.1.2.4.b below), and contract on fulfilling a certain task. After completing the task, the employee is entitled to the statutory severance payment.

d) Job description and place of work

Job descriptions, recruitment conditions and job requirements can be specified in the main text of the labor contract or in annexes. Precise formulations may facilitate a termination, especially during the probation period.

The place of work (usually the city is indicated) is also an essential clause in the labor contract, the change of which shall be deemed as a significant amendment of the contract requiring in principle the consent of the employee. Labor contracts usually include provisions on business trips.

As mentioned above, the additional applicability of the local rules depends on the place of work. If the place of work and registered domicile of the employer fall apart, special rules for the most-favored treatment of the employee apply.

e) Invalid contracts or contract clauses

A labor contract can be partially or totally invalid for various reasons (e.g. violation of mandatory law). If it is uncertain whether the contract is valid or void, the decision can be taken to the people's court or the arbitration tribunal. The partial invalidity does not automatically entail the invalidity of the entire contract. Even if the labor contract is found invalid later, the employee is still entitled to the due payment of the salary.

2.1.2.2. Form of the labor contract

In principle, the labor contract must be concluded in written form within 30 days after the actual start of work. Both parties must receive at least one original of the signed labor contract, which should also be well documented.

IMPORTANT: In the absence of a written contract, the employer is obligated to pay the employee double salary after the expiry of the first month and up to 11 months. If an employer does not conclude a written labor contract with an employee for one year from the actual start of work, the employer is deemed to have concluded an open-ended labor contract with the employee.

An exception applies to part-time employees (e.g. for a household helper). A part-time employee may work for more employers, if the labor contract concluded later will not affect the performance of the labor contract concluded earlier. A part-time employee normally works with one employer for no more than four hours daily and no more than 24 hours weekly on average. Their wage is mainly calculated on an hourly base and shall be paid at least every 15 days. Either party may terminate the part-time employment at any time without severance to be paid by the employer. An oral labor contract with a part-time employee is legally permitted. Although for evidence purposes, a written agreement is recommendable.

2.1.2.3. Language of the contract

By law, a Chinese version of the contract must be prepared. The Chinese version prevails over other language versions in case of disputes. In many locations, the submission of a labor contract is required for obtaining work and residence permits for foreigners. Unnecessary risks can emerge if a "pro forma Chinese labor contract" is concluded, whose contents are not intended by the parties and differ from the foreign language version. In disputes, the involved Chinese courts or arbitration commissions may likely only refer to the Chinese contract. Bilingual contracts are often prepared in practice for internationally operating companies.

2.1.2.4. Recommended optional aspects

a) Probation period

The probation period can only be agreed upon once between the same employer and the same employee, which is also a very common practice in the PRC. The payment for the probation period shall not be lower than 80% of the later normal salary, or of the salary of other employees committing the same activities, and may not be lower than the local minimum salary. The maximum length of the probation period depends on the term of the labor contract:

Term of the labor contract	Maximum probation period
3 months (incl.) to less than 1 year	1 month
1 year (incl.) to less than 3 years	2 months
3 years (incl.) or longer or open-ended	6 months

b) Part-time work

Under PRC law, part-time employment exists when the employee works on average no more than four hours daily and no more than 24 hours weekly for the same employer. The payment is usually calculated on an hourly basis; local minimum salaries have to be observed. An employee working on a part-time basis may conclude employment relationship with several employers, as long as the later concluded labor contract does not affect the performance of a previously completed contract. In such cases, the compensation shall be paid at least every 15 days. A probation period is not allowed for part-time work. The employment relationship can be terminated at any time without notice, also without any severance payment obligations.

2.1.3. Labor dispatch

2.1.3.1. Representative offices and labor dispatch agencies

Since the 1980s, PRC rules mandatorily require that all Chinese nationals employed for representative offices of foreign enterprises can only be hired through licensed labor dispatch agencies (such as FESCO, efesco, CIIC, ChinaStar, etc.). This arrangement still exists until today.

The hiring of employees through labor dispatch agencies has been prospering also for other corporate vehicles (joint ventures, wholly foreign owned enterprises), for example in the direct sales businesses. But for various political and social reasons, the legislature decided to restrict the possibilities of labor dispatch from July 2013, and it also has limited the establishment of labor dispatch agencies by setting up higher requirements.

2.1.3.2. Conditions

a) Limited cases where labor dispatch is still allowed

The latest Labor Contract Law allows labor dispatch only in three cases, to be interpreted narrowly:

- (i) For temporary jobs with a maximum duration of six months
- (ii) For auxiliary jobs, which do not constitute the core area of the business operations
- (iii) For back-up jobs, as the temporary replacement for normal employees (e.g. due to absence for full time study, vacation/leave or other reasons)

In addition, the number of the dispatched employees used by a receiving entity shall not exceed 10% of the total number of the employees used by such receiving entity. The total number of the employees used by the receiving entity refers to the sum of the number of employees who have entered into labor contracts with the receiving entity and the number of the dispatched employees used by such receiving entity.

b) Contractual structure

The labor contract between the labor dispatch agency (as employer) and the dispatched employee must meet the minimum requirements for labor contracts. Engagement on a part-time basis is prohibited. The receiving entity (i.e. the company, to which the employee is dispatched and for which he/she actually works) shall also be designated in the labor contract. For the period, during which the employee is not working for any receiving entity, the employee must receive at least the local minimum salary.

A service or dispatch agreement shall be concluded between the labor dispatch agency and the receiving entity. The dispatched employee shall also be informed of the contents of such agreement.

Besides the labor dispatch, so-called "labor outsourcing services" can also be considered. Before entering into a labor outsourcing contract, its legality and the labor contracts between the contractor and its employees concerned should be verified. The structure should not circumvent the rules on labor dispatch.

"Labor outsourcing" refers to a labor-use pattern, in which the principal contracts out its certain businesses to a contractor, who arranges its own staffs to complete the corresponding assignments as required by the principal. In a labor dispatch relationship, the receiving entity directly commands and manages the daily work of the dispatched employees, and the dispatched employees shall follow the rules and regulations of the receiving entity. In a labor outsourcing relationship, the principal does not participate in the direction and management of the employees deployed by the contractor, and the contractor directly commands and manages its employees.

Unlike labor dispatch, employee secondment between affiliated companies is less regulated. Such secondment is generally permissible if a company temporarily transfers employees to another affiliated company for a specific period and for a specific purpose, whereby the employment relationship remains in place.

According to an interpretation by the Chinese Supreme People's Court, the following rules apply if an employee is employed alternately or simultaneously by affiliated companies and the employee requests confirmation of the employment relationship:

- If a written employment contract has been concluded, the employment relationship shall be determined in accordance with the employment contract;
- If no written employment contract has been concluded, the employment relationship shall be determined on the basis of employment management practices, taking into account factors such as working hours, scope of duties, wage payments, and social security contributions. In such cases, if the three parties have not reached a corresponding agreement, the employee may require the affiliated companies to jointly assume responsibility for the payment of wages, social benefits, and other entitlements.

In order to ensure clear legal relationships, optimize personnel management, and reduce potential risks and costs (e.g., avoiding illegal labor dispatch, double employment law protection, and double social security), employers should therefore consider entering into appropriate tripartite agreements with the employees to be seconded and their affiliated companies where these employees will be deployed, in accordance with the actual requirements of the individual case.

c) Term of the dispatch

The labor contract must specify the term of the dispatch and detailed description of the activities. Two years is the minimum term of a labor dispatch contract, and this duration has become standard in most cases.

2.2. Changes to an employment relationship

In principle, changes to a labor contract are only allowed through a mutually agreed written amendment agreement. Especially all the essential elements of the contract, e.g. place of work and salary, normally cannot be unilaterally changed by the employer.

According to an Interpretation of the Supreme People's Court, an amendment of the labor contract can also be exceptionally valid based only on an oral agreement, if both parties have already fulfilled the changed contents (e.g. a salary increase) for more than one month, and the amendment does not violate laws or regulations.

Moreover, if operations are suspended during a payment cycle (e.g. the first month) for reasons not attributable to the employees (e.g. the governmental measures against the pandemic), the employer has to pay regular wages according to the labor contracts. Should the work stoppage last longer than one payment cycle and where no normal work has been provided during the prolonged work stoppage, the employers shall at least pay the local living fees to their employees (e.g. in Shanghai the current local minimum wage of CNY 2740/month).

2.3. Additional rules on the employment relationship

2.3.1. Employee handbooks

2.3.1.1. Importance

In practice, individual labor contracts often only contain essential rights and obligations of the parties. Depending on the type of business, it can be of substantial interest for the employer to set down much more detailed rules for the employees in internal binding documents, whose violation can lead to disciplinary actions including termination.

The Labor Contract Law expressly motivates employers to adopt internal rules and regulations. Employee handbooks have become a particularly widespread practice in the PRC.

2.3.1.2. Contents of the employee handbook

Laws and regulations contain no requirements on the minimum contents of an employee handbook. The design of the employee handbook is solely at the discretion of the employer. However, the content of the employee handbook has to be lawful, fair and reasonable.

If there are already internal rules of the group company in other jurisdictions, these can often be used as a first template for a PRC company. Foreign law governed templates should be very carefully checked on their compliance with PRC law and adapted, and will normally require translation into Chinese.

Typical contents of an employee handbook can include:

- (i) Introduction of the company, expectations of the management, company cultures, purpose of the employee handbooks
- (ii) On-board process
- (iii) Explanations of the labor contract
- (iv) Probation period
- (v) Company standards
- (vi) General compliance rules, notice of the legal regulations
- (vii) Concrete codes of conduct, workplace, dressing code, nametags, access to the company, visitors, photography and smoking prohibitions
- (viii) Remuneration (salary, allowances, overtime payment, bonuses)
- (ix) Business travel, reimbursement of expenses
- (x) Working hours (shift system rules), compulsory attendance (time clock), overtime policy
- (xi) Annual leave and special leave (marriage, maternity/ paternity, funeral), public holidays
- (xii) Additional social securities (e.g. private insurance, loyalty rewards)
- (xiii) Information and communications (notices within the company, "Bulletin Board"), external communications
- (xiv) Use of telecommunications, IT and Internet, as well as other company properties
- (xv) Internal and external training
- (xvi) Career development, career and performance discussions
- (xvii) Transfers within the company
- (xviii) Health and safety, handling procedures for accidents, drug and alcohol abuse, actions in emergencies, evacuations and fire
- (xix) Disease and sickness pay
- (xx) Confidentiality
- (xxi) Representation of the company to the outside, conflicts of interest
- (xxii) Types of disciplinary breaches, verbal warning, written warning
- (xxiii) Termination and exit process
- (xxiv) Implementation and amendment of the employee handbook

2.3.1.3. Participation of the employees

The employees must be "involved" in the formulation process of all internal regulations which directly affect their interests. This applies also to employee handbooks, as well as to other important decisions affecting the employees.

The draft or the intended modification of employee handbooks must be discussed with the Employee Representative Congress or the entire work force. Although they do not have a veto right, they must be given the opportunity to express their opinion. In addition, the labor union and the Employee Representatives have to be consulted. Before the final adoption of the draft, any raised concerns and their proposal for solution, the consultation process and the amendment to the drafts (if any) should be carefully documented. The documentation of the consultation process is very important for the internal regulations to be held valid in case of dispute. In addition, the internal regulations ideally should also be referred to in the labor contract with the employee and the receipt of them (including their updated versions) should also better be signed by the employee, which increases their enforceability.

The employer is legally obligated to announce and inform all employees of the internal rules and regulations as well as important decisions directly affecting their interests. This process should also be carefully documented.

2.3.2. Working time/Overtime policy

2.3.2.1. Working time

The normal statutory working time in the PRC is 40 hours per week, i.e. typically eight hours per day from Monday to Friday. Companies can also stipulate resting days other than the weekends in differing work cycles (e.g. Monday and Tuesday instead of the weekend). Shift systems are also allowed.

2.3.2.2. Overtime

Working time beyond the normal working hours is regarded as overtime, unless it was agreed upon a so-called “flexible working time system” or “comprehensive working time system”, which normally requires additional approval by the local labor administration.

The overtime hours cannot exceed 36 hours a month and three hours a day. Refusal to work overtime cannot be interpreted as violation of the work discipline. In the PRC, employees usually do not refuse to work overtime when receiving overtime payment. The approval process for overtime work can be set up in the internal regulations (usually the employee handbook), and the employees will normally only be paid after the completion of such process.

Only overtime during the weekend (Saturday/Sunday or other resting days as agreed in different work cycles) can be compensated by alternative time off. Overtime on public holidays and normal working days must only be compensated through overtime payments.

Depending on the time of the overtime work, different multiples apply to the normal daily or hourly salary as agreed in the labor contract:

Time of Overtime Work	Overtime Payment Multiples
Normal working days	at least 150%
Saturday/ Sunday (or other resting days)	at least 200%
Public holidays	at least 300%

If employers require their employees (regardless of the applicable working time schemes) to work on public holidays, they must pay them not only their normal remuneration but also the above-mentioned statutory overtime pay of at least 300% of the employee's wage, which corresponds to a total of 400% of the normal wage.

2.3.2.3. Other working time models

a) Flexible working time system

A flexible working time system, under which the entire working time shall be covered by the agreed work remuneration, can only be adopted for the following positions: Managers, sales representatives, night shift employees, and employees in special industries (e.g. taxi drivers, long distance freight drivers, loaders in the transport sector, etc.).

b) Comprehensive working time system

The comprehensive working time arrangement allows different working time for: (i) staff in special industries, which must be carried out for longer time without interruption (e.g. transportation, railway, post, and fishing); (ii) employees in specific sectors, whose working time is restricted by seasonal/ natural reasons (e.g. geology, raw material exploitation, construction, tourism).

2.3.3. Minimum salary

Similar to many Western countries, in the PRC, there is a statutory minimum salary, which is usually set at the province level, regardless of the industry or business type. For instance, in Shanghai the current local minimum salary amounts to CNY 2740/month (as of July 2025). The provincial government will normally adjust its amount once annually. More details on the social insurance and exceptions should be clarified based on the current valid local regulations.

2.3.4. Holiday and leaves

2.3.4.1. Statutory annual leave

According to PRC law, subject to certain statutory exceptions, all employees who have continuously worked with their employer(s) for one year or more are entitled to statutory annual leave. The minimum length of the statutory annual leave is currently nationwide decided based on the cumulative working years of the individual employee at all his employers:

Cumulative Working Years	Minimum paid statutory annual leave
1 year (incl.) to 10 years	5 working days
10 years (incl.) to 20 years	10 working days
20 years (incl.) or more	15 working days

Employers are legally obligated to plan and arrange for their employees to take annual leave according to the actual production and work status and by considering the personal preference of the respective employees. With approval of the employer untaken leave days can be transferred to the next calendar year. The employer may also instruct holidays if the employee does not take the entitled number of statutory leave days. If the employee still refuses (e.g. for personal reasons), he/she should submit a written notice or be required to sign a written waiver. Such a waiver is only valid under the described circumstances. When it is already part of the labor contract, the waiver is void. In the absence of a written notice or a written waiver, the employer is obligated to pay 200% of the normal daily salary for every accrued but untaken statutory leave day. The normal daily salary for the purpose of calculating the payment in lieu of annual leave for an employee shall be calculated by dividing his/her monthly salary by the number of working days in a month (21.75 days). The monthly salary aforementioned refers to the average of 12 months' salary (excluding overtime payment) received by the employee before the employer makes him/her payment in lieu of annual leave. Where the employee has been employed for less than 12 months, the average salary shall be calculated by reference to the actual number of months.

Beyond the above statutory annual leave, many companies voluntarily grant more paid leave days per year. In such cases, careful contractual arrangements are recommended to reduce the risk of above 200% compensation becoming applicable to voluntarily granted additional paid leave days.

2.3.4.2. Public holidays

For the year 2026, the statutory public holidays in the PRC applicable to all employees are as follows:

Holidays	Date	Make-up workday*	Remarks
Newyear	January 1-3	Sunday, January 4	3 days (incl. Saturday, Jan 3)
Chinese New Year	February 15-23	Saturday, February 14 Saturday, February 28	9 days (incl. weekend, Feb 21-22)
Qingming Festival	April 4-6	-	3 days (incl. weekend, Apr 4-5)
May 1/Labor Day	May 1-5	Saturday, May 9	5 days (incl weekend, May 2-3)
Dragon Boat Festival	June 19-21	-	3 days (incl. weekend, Jun 20-21)
Mid-Autumn Festival	September 25-27	-	3 days (incl. weekend, Sep 26-27)
National Day/ Golden Week	October 1-7	Sunday, September 20 Saturday, October 10	7 days (incl. weekend, Oct 3-4)

In addition to the above holidays applicable to all employees, female employees and employees up to 28 years old enjoy 0.5-day statutory holidays respectively on the International Women's Day (March 8) and the national youth day (May 4).

*In case a public holiday falls on a weekend, it is taken on a workday before or afterwards. The government usually announces the details a certain time in advance, which are adopted by the majority of companies in China. The period around the statutory holidays, especially the "golden weeks" around Chinese New Year and the National Day, are less suitable for business meetings in China.

2.3.4.3. Other paid leave

Depending on the detailed national and local regulations, the employees are entitled to additional paid leaves, including marriage leave, maternity, paternity and breast-feeding leave (please refer to below 2.5.1), and compassion leave due to death of relatives.

2.3.5. Medical treatment period/sick leave payment

PRC law differentiates between work-related and non-work-related injuries and diseases.

In case of non-work-related injuries and diseases, the maximum statutory medical treatment period normally depends on the overall work duration of the employee (all employers combined), and his work duration with the current employer. It can be from three to 24 months (extendable in severe cases). During the sick leave, local regulations define the amount of sick pay to be paid to the employee, which need to be checked in each individual case, but sick pay may not be lower than 80% of the local minimum wage. During the medical treatment, the employee enjoys the described protection against ordinary termination. Further details can e.g. be set out in employee handbooks.

For instance, Beijing follows the national standard as follows:

Article 3 of the Provisions on Medical Treatment Period for Enterprise Employees Suffering from Illness or Non-Work-Related Injury stipulates that when an enterprise employee requires medical treatment due to illness or non-work-related injury, medical treatment period shall be granted for a period ranging from 3 to 24 months based on the employee's actual total years of service and years of service with the current employer:

- For employees with less than 10 years of actual service:
 - Those with less than 5 years of service with the current employer shall receive 3 months of medical leave;
 - Those with 5 or more years of service with the current employer shall receive 6 months of medical leave.
- For employees with actual work experience of 10 years or more:
 - Those with less than 5 years of service at the current employer: 6 months;
 - Those with 5 to less than 10 years of service: 9 months;
 - Those with 10 to less than 15 years of service: 12 months;
 - Those with 15 to less than 20 years of service: 18 months;
 - Those with 20 years or more of service: 24 months.

Additionally, Article 4 stipulates:

- For a 3-month medical treatment period, sick leave accumulation is calculated within 6 months;
- For a 6-month period, accumulation is calculated within 12 months;
- For a 9-month period, accumulation is calculated within 15 months;
- For a 12-month period, accumulation is calculated within 18 months;
- For an 18-month period, accumulation is calculated within 24 months;
- For a 24-month period, accumulation is calculated within 30 months.

Article 21 of the Beijing Municipal Provisions on Wage Payment stipulates that when an employee falls ill or suffers a non-work-related injury, the employer shall pay sick leave wages during the sick leave period in accordance with the terms of the labor contract or collective agreement. The sick leave wages paid by the employer shall not be less than 80% of the municipal minimum wage standard.

Shanghai applies its following local standard according to its Provisions on Medical Leave Standards for Employees Who Become Ill or Sustained Non-Work-Related Injuries During the Term of Their Employment Contracts:

In Shanghai, the length of the medical treatment period is based on the employee's years of service at the current company. For the first year of employment, the medical treatment period is 3 months. For each subsequent full year of service, one additional month is granted, with a maximum total of 24 months.

In Shanghai, for employees taking sick leave or non-work-related injury leave for up to 6 consecutive months, their employers shall pay sick leave wages according to the following standards:

- For continuous service of less than 2 years: 60% of the employee's wage;
- For continuous service of 2 to less than 4 years: 70% of the employee's wage;
- For continuous service of 4 to less than 6 years: 80% of the employee's wage;
- For continuous service of 6 to 7 years, 90% of the employee's wage;
- For continuous service of 8 years or more, 100% of the employee's wage.

For employees on continuous sick leave or non-work-related injury leave exceeding 6 months, their employers shall pay sickness relief allowance:

- For continuous service under 1 year, 40% of the employee's wage;
- For continuous service of 1 year but less than 3 years, 50% of the employee's wage shall be paid;
- For continuous service of 3 years or more, 60% of the employee's wage shall be paid.

The minimum wage for sick leave or sickness relief benefits shall not be less than 80% of the city's minimum wage for enterprise employees in the current year. The minimum standard excludes statutory pension, medical, unemployment insurance premiums, and housing provident fund contributions payable by the employee.

In case of work-related injuries and diseases, the special rules and protection through the work-related injury insurance system apply (see below section 5.6).

2.3.6. Non-competition

2.3.6.1. During the employment

It is common that employees are not allowed to engage in or prepare for any activities in competition with the company's business. This is allowed for employees subject to confidentiality obligations or the senior managers/ senior technicians etc. A fixed liquidated damage amount can exceptionally² be agreed upon in the labor contract for breaching such obligations.

2.3.6.2. After the employment

The non-competition obligation after the end of employment relationship is also only allowed for employees with confidentiality obligations, or senior managers / senior technicians etc. Within the duration of the non-competition obligation (maximum period: 2 years), the employee must receive a monthly compensation. The

² The Labor Contract Law allows liquidated damages only in the following two cases: breach of the non-competition obligation and breach of a training (loyalty) agreement.

required minimum monthly amount depends on local regulations and should be checked case by case. Often the amount is about 30% of the average monthly salary in the last 12 months prior to the end of employment and shall not be lower than the local minimum wage, based on an interpretation issued by the Supreme People's Court. If the employer unilaterally terminates the non-competition agreement during the non-competition term, the employee is entitled to another 3 months' non-compete compensation.

As in many countries, the enforcement of post-contractual non-compete obligations is very difficult in practice in the PRC. Employees may also find relatively easy ways to circumvent the obligations, and related evidence is normally very difficult to be obtained. That is why the necessity of respective clauses should be carefully evaluated. If any, the relevant clauses should be well drafted (e.g. with the liquidated damages and the employee's reporting obligation), the employee's performance should be closely monitored and the timing for terminating such agreement should be thoroughly considered.

2.3.7. Continuing Education and Training agreements

PRC law allows to agree on loyalty periods if the employer funds a "special professional training" for the employee. After the completion of such training, the employee is obliged to serve for the employer at least for the agreed loyalty period.

The employee has to pay linearly reduced liquidated damages as agreed in the labor contract if leaving before the end of the loyalty period. The liquidated damages shall not exceed the actual cost of the training borne by the employer, including the cost for such training, travel and other direct costs incurred out of the training.

2.4. Terminations

An employment relationship can end based on different reasons. Most important in Chinese law is the termination through a mutual agreement, the unilateral termination, and the termination based on term expiry.

2.4.1. Termination through mutual agreement

The employment relationship can be terminated by a mutual written termination agreement.

2.4.2. Unilateral terminations

Under current PRC law, in principle it is not possible to deviate from the statutory catalogue of termination reasons (except in the case of foreign national employees in Shanghai). In particular, it is not valid to add further termination reasons in a labor contract. Today, labor contracts often just refer to the statutory laws, without repeating below situations.

At some locations, it may be allowed by local regulations to prolong certain notice periods for certain employees with access to the employer's trade secrets. Respective possibilities should be checked on a case by case basis.

2.4.2.1. Termination in the probation period

During the probation period, after notifying the labor union of the termination reason, the employer may terminate the employment relationship immediately and without paying statutory severance if the employee is proven incompetent for the job. The employee may terminate without any reason with a three-day advance notice period.

2.4.2.2. Ordinary termination (usually with 30 days advance notice)

a) Ordinary termination by the employer

After notifying the labor union of the termination reason, the employer may terminate the labor contract by written notice (only) in any of the following cases under observation of a 30-day notice period (or one monthly salary pay in lieu of notice period):

- The employee is unable to fulfill the original job or other jobs as arranged by the employer after the expiry of the statutory medical treatment period for non-work-related illness or injury
- The employee is unable to fulfill the job and remains incompetent after training or adjusting the position
- There is a significant change in the objective circumstance when concluding the contract and both parties cannot agree on changes to the contract

However, ordinary termination by the employer is excluded in any of the following cases:

- Certain circumstances connected to work-related diseases and injuries
- Non-work-related injuries or diseases, with the statutory medical treatment period not having expired
- Also excluded is the ordinary termination for the pregnant women or women in the lactation period (see more detail in section 2.5.1 below) and elder employees who have worked for at least 15 consecutive years for the employer and will reach the statutory retirement age within less than five years.

b) Mass lay-offs

Special rules apply to mass lay-offs, where an employer needs to cut his workforce by more than 20 persons, or 10% or more of the total workforce. In such case, the labor union, staff and local labor authority need to be involved in a more complex termination process. A mass lay-off is only possible under any of the following circumstances:

- The employer undergoes restructuring
- The employer is suffering serious production and business difficulties
- The employer undergoes a change of production, significant technological reform or change of mode of operation and after amending labor contracts, there is still a need for retrenchment
- the objective economic circumstances for which the conclusion of a labor contract is based upon have undergone significant changes and as a result thereof, the labor contract can no longer be performed

c) Ordinary termination by the employee

The employee may terminate the labor contract through written notice after the probation period with a notice period of 30 days. No reason for termination is required here.

2.4.2.3. Immediate termination

a) Immediate termination by the employer

After notifying the labor union of the termination reason, the employer may terminate the labor contract by written notice with immediate effect (only) for any of the following reasons:

- The employee is proven incompetent for the position during the probation period (see section 2.4.2.1 above)
- The employee seriously violates the rules and regulations of the employer

- The employee has committed a serious dereliction of duty or has been engaged in malpractices for personal gain, which has caused material damages to the employer
- The employee has established an employment relationship with another employer during the term of the labor contract, which seriously affects his/her work performance, or the employee refuses to correct such actions after being notified by the employer
- The employee is held liable for criminal offence
- The employee has caused the invalidity of the labor contract according to certain statutory reasons (e.g. fraud, coercion by the employee)

b) Immediate termination by the employee

The employee may terminate the labor contract immediately (only) normally by written notice in any of the following cases:

- The employer does not provide the occupational safety or working conditions in accordance with the standards set forth in the labor contract
- The labor remuneration is not fully and timely paid
- The employer doesn't pay the social security premiums for the employees in accordance with the law
- The rules and regulations established by the employer violate applicable laws or regulations and therefore harm the interests of the employee
- The employer exercises violence against the employee or forces him/her to work by threatening or other unlawful practices
- The employer has caused the invalidity of the labor contract according to certain statutory reasons (e.g. fraud, coercion by the employer)
- The employer forces an employee to work in certain circumstances, or instructs the employee to engage in hazardous activities that endanger the personal safety of the employee (termination without advance notice allowed in this case)

2.4.2.4. End of a fixed-term labor contract

The fixed-term labor contract ends with the expiry of its term. Exceptionally, the employment relationship may be extended when statutory prohibition reasons (see section 2.4.2.2 a) above) exist at the time of the expiry. In such cases, the term of the labor contract shall be extended until the respective situations have ceased to exist.

2.4.2.5. Other causes to end an employment relationship

The employment relationship also ends when the employee dies or is declared dead or missing by a People's Court; when the employee reaches his or her statutory age, starts to receive the basic pension; when the employer is declared bankrupt, its business license is revoked and ordered to close the business or decides for an early dissolution and liquidation. Due to the rather vague stipulations in the law, a careful case-by-case analysis is recommended.

2.4.3. Consequences of a termination / ending

2.4.3.1. Right to ask for an employment confirmation

After departure, the employee is entitled to obtain a certificate of termination of the employment relationship, and required file transfers shall be carried out within 15 days after departure.

The certificate includes the term of the labor contract, the termination date, the position of the employee and the duration of his employment with the employer. The employer may be ordered by the labor administration to issue such certificate if it fails to fulfill this obligation initiatively. In addition, the employer may be held

liable for the damages occurred to the employee for failing to issue the certificate, e.g. when the employee is unable to take up a new job because he did not receive the certificate on time.

2.4.3.2. Severance

The employee is entitled to receive a severance payment in case of an immediate termination by the employee (see section 2.4.2.3 b) above).

The employee is also entitled to receive the severance payment:

- When a mutual termination agreement is concluded upon proposal or initiative of the employer
- In case of an ordinary termination by the employer (see section 2.4.2.2 a) above)
- When the employer terminates through a mass lay-off (see section 2.4.2.2 b) above)
- Upon the expiry of a fixed-term contract, unless the employee has declined an offer by the employer to extend the labor contract with same or better conditions

Working time after January 1, 2008

For working time after January 1, 2008, the amount of the severance is a “monthly salary” for each full year of employment, for which also periods of six months or more but less than twelve months shall be counted as one year. For periods of less than six months, the employee receives half of the “monthly salary”.

The “monthly salary” is calculated based on the average remuneration of the employee in the last twelve months prior to the termination of contract. Any bonuses, allowances and other payments shall be included.

If the calculated average “monthly salary” exceeds an amount equal to three times the average monthly salary in the region of the employer, the “monthly salary” is capped three times the local average monthly salary. As an example, the current cap (as of July 2025) in Shanghai is CNY 37,302 gross. The maximum number of working years to be considered is twelve.

The “monthly salary” used for the severance calculation may not be lower than the local minimum monthly salary.

Working time until December 31, 2007

If the employment relationship already existed before January 1, 2008, the employee may still be entitled to additional severance payment for the period prior to January 1, 2008 if the locally applicable regulations at that time stipulated a severance payment obligation. In such case, a very careful analysis and calculation is advisable, and above caps may not apply for this period.

2.4.3.3. Consequences of an illegal termination

a) Illegal termination by the employer

If the employer terminates the labor contract against the law, and the employee requires the employer to continue performing the labor contract, the contract shall be fulfilled based on the original terms. If the employee does not require a reinstatement or it is impossible to continue performing the labor contract, the employer must pay the employee compensation in the amount equal to double the statutory severance, with caps applying (calculation of the severance see section 2.4.3.2 above for working time after January 1, 2008).

b) Illegal termination by the employee

If the employee terminates the labor contract against the provisions of the Labor Contract Law, or violates the clauses regarding confidentiality obligations or competition restrictions set forth in the labor contract, and thereby causing losses to the employer, the employee shall be held liable for the damages.

2.5. Special Protection for Female and Underage Employees

2.5.1. Protection for female employees

In addition to the general protection of equal treatment, the Labor Law, the Law on the Protection of Rights and Interests of Women and the Special Provisions on Labor Protection for Female Employees entail special regulations for the support of pregnant women and mothers. Employers shall include special protection clauses for female employees in their labor contracts and shall not impose restrictions on their marriage and childbirth. The collective contracts concluded by and between the employer and the employees shall contain provisions regarding gender equality and protection of female employees' rights and interests. Employers shall also take the statutorily required measures to prevent and stop sexual harassment against female employees.

Female employees enjoy:

- General health protection and prohibition of certain jobs, gender discrimination, sexual harassment
- Special protection for pregnant women and mothers
- Pregnant employees and nursing mothers shall not be engaged in certain physical activities. Furthermore, after the 7th month of the pregnancy and in the nursing period, women may not be arranged to work overtime or on night shifts.
- Ordinary termination by the employer is excluded for female employees in her pregnancy, confinement and nursing period.

For instance, in Zhejiang Province, employers must provide female employees with the following protective measures during pregnancy:

- The time required for prenatal examinations during working hours is counted as part of their working time;
- When work quotas are applied, their workload shall be reduced appropriately;
- If a medical certificate certifies their inability to perform their original job, their workload is reduced or they are temporarily assigned other suitable tasks;
- For pregnant women in their first trimester suffering from severe nausea or pregnant women in their seventh month or beyond, at least one hour of rest time must be provided during their daily working hours; their working hours must not be extended and they must not be assigned to night shifts;
- They shall not be assigned to work that is prohibited during pregnancy in accordance with national regulations (e.g., heavy physical labor).
- If a female employee has a threatened miscarriage, a history of repeated miscarriages, or other special circumstances and requests a rest period based on a medical certificate, the employer shall make appropriate arrangements.

Currently, female employees in Zhejiang Province are entitled to 98 days of paid maternity leave at the national level when they give birth (of which 15 days can be taken as prenatal leave). In the event of a difficult birth, an additional 15 days of maternity leave are granted. In the case of multiple births, an additional 15 days of maternity leave are granted for each additional child. Couples who meet the legal requirements for childbirth may be entitled to extended maternity leave in accordance with the provisions of the Zhejiang Province Population and Family Planning Regulations: an additional 60 days for the first child and an additional 90 days for the second or third child. Male employees in Zhejiang Province are entitled to 15 days of paid paternity leave. Within the first three years of the child's life, both parents are entitled to ten days of paid parental leave per year.

Female employees who terminate their pregnancy before the end of the fourth month are entitled to 15 days of maternity leave; those who terminate between the fourth and seventh months are entitled to 42 days; and those who terminate after the seventh month are entitled to 98 days.

During breastfeeding, employers must guarantee the following protective measures for female employees:

- At least one hour of breastfeeding break during daily working hours; for mothers of multiple children, an additional hour is granted for each additional child;
- No extension of working hours or assignment of night shifts;
- If work quotas are introduced, the workload shall be reduced appropriately;
- No work may be assigned that is prohibited during breastfeeding in accordance with national regulations (e.g., heavy physical work).
- Breastfeeding breaks and the time spent traveling to and from the breastfeeding location at the workplace are considered working time.

2.5.2. Protection for underage employees

Underage employees are defined as employees who are at least 16 but not yet 18 years old. To establish a valid employment relationship in the PRC, the employee must at least have reached the age of 16. Exceptions are only allowed to a very narrow extent with administrative approval.

Similar to the protection for female employees, it is also prohibited to hire underage employees in certain areas, including underground work, toxic and hazardous work, physical work of a certain severity, etc.

3. COLLECTIVE LABOR LAW – RELATIONSHIP BETWEEN EMPLOYER AND REPRESENTATION ORGANS

3.1. Joint representation organs

3.1.1. Labor union

If an enterprise has 25 union members or more, and they so request, it is legally required to establish a “labor union on the base level”. For enterprises with less than 25 union members, the establishment of the labor union is optional. Alternatively, a union official may be elected to organize the activities for all employees. The labor union organization on the higher level (e.g. in a municipality) supports (and approves) the establishment of the labor union on the enterprise level. Almost each district has its own detailed, partly deviating local union regulations, which should be checked additionally.

The basic tasks of the labor union contain among others:

- Protection of employees’ interests and rights and providing legal aid to the employees
- Assisting and guiding the employees in signing labor contracts
- Negotiating and concluding collective contracts
- Organizing democratic participation in management by the workforce through the employee representative congress
- Organizing meetings and activities of employees outside working hours
- Mediation of labor disputes

In recent years, the All-China Federation of Trade Unions (ACFTU) has been strengthening their efforts in implementing the principle of collective bargaining and conclusion of collective contracts. In practice, especially the larger companies are frequently urged to establish labor unions, including foreign invested enterprises.

3.1.2. Employee representative congress

The employee representative congress (the “**ERC**”) is the basic form of the so-called democratic management system for all companies in China. The ERC consists of representatives elected by all employees of a company.

As its working body, the daily duties of a company’s ERC shall be carried out by the company’s labor union.

As long as the conditions specified in the local regulations are met (e.g. for companies with 100 or more employees in Shanghai), an ERC must be held. In case a company in Shanghai has less than 100 employees, an all-staff assembly shall be held. Through holding the ERC or the all-staff assembly, a clear mechanism for implementing legal democratic participation rights is accomplished, which can reduce the risks of invalid internal regulations/decisions for lack of employee participation.

The ERC meeting shall be held at least once a year and the ERC has, inter alia, the followings authorities:

- Listening to management reports on the operation of the company and putting forward opinions and suggestions
- Deliberating rules and decisions concerning the immediate interests of employees and putting forward opinions and suggestions
- Deliberating and adopting collective contracts
- Electing and dismissing employee directors and supervisors

3.1.3. Employee directors and employee supervisors

As of July 1, 2024, a company with 300 employees or more shall have ERC-elected employee representatives on its board of directors, unless it already has a board of supervisors with employee supervisor(s) elected by the ERC.

Senior management personnel of the company shall not concurrently serve as employee directors and employee supervisors. Candidates for employee directors and supervisors shall be nominated by the company labor union and shall be elected by a majority of all the delegates of the ERC, and shall be reported to the higher-level labor union organization for record. The chairman and vice-chairman of the company labor union shall be candidates for employee directors and supervisors.

Employee directors and supervisors shall attend the meetings of the board of directors and the board of supervisors respectively and exercise the right to speak and vote. They may propose to convene meetings of the board of directors and the board of supervisors respectively regarding rules and regulations or major matters of immediate interest to employees. They may also attend the management meetings and important meetings relating to the company's production and operation related to their duties. They are entitled to request the company labor union and the relevant departments of the company to inform them of the relevant situation and provide them with relevant information.

During the term of office of employee directors and supervisors, the company shall not terminate the labor contract with them except under statutory circumstances.

3.2. Collective contracts

3.2.1. Differences between a collective and an individual labor contract

The labor unions or selected representative(s) in the companies without labor union can represent all of the employees in the negotiations with the employer on a collective contract and sign the negotiated collective contract on the employees' behalf.

Summary of the differences between a collective contract and individual labor contract:

Differences	Collective Contract	Individual Labor Contract
Parties	labor union or the selected representative(s) + employer	individual employee + employer
Contents	general rules applicable to all employees of a certain enterprise or an industry	Negotiated individual contents, which can deviate from employee to employee
Precondition	A collective contract can only be signed when a certain number of individual contracts already exist	N/A

The employer must conclude an individual labor contract with each employee, in which the employee accepts the validity of the collective contract. It does not matter whether the employee is newly hired or has been working with the employer already. A collective contract cannot replace the individual labor contract in the PRC.

3.2.2. Contents and form of a collective contract

Collective contracts typically address issues of remuneration, working hours, resting days and holidays, health care and occupational safety, as well as insurance law matters and social security issues. These types of issues are often alternatively addressed in employee handbooks.

3.2.3. Change and termination of a collective contract

A collective contract generally shall have a term of one to three years and ends upon the expiry of this term or with certain events as agreed by both parties. Either Party may propose to conclude a new contract or extend the existing contract three months prior to the expiry.

4. LABOR DISPUTE RESOLUTION

4.1. Mediation

If a labor dispute arises, the parties may optionally apply to the mediation committee for a mediation process. The committee shall be established within the employer and consists of representatives of the employees, the employer and the labor union respectively.

The chair of the mediation committee shall always be the representative of the labor union. If an agreement can be reached through mediation, it shall be binding on the parties. If the mediation fails, either party can apply for arbitration at the competent labor arbitration commission.

In practice, mediation is very rare. In the most common case of a labor dispute, i.e. a challenged unilateral termination by the employer, the employee usually files for labor arbitration immediately to increase the pressure on the employer.

4.2. Labor arbitration

In case of a dispute, either side may apply for labor arbitration at the competent local arbitration commission for the initiation of an arbitration process. The arbitration commission is an organization composed of representatives of the labor administration, labor unions and enterprises. The statute of limitations is one year.

Many principles of court proceedings also apply to the arbitration process, e.g. the principle of publicity and the right to be represented by a lawyer. This proceeding is free of charge, which is one of the main reasons the number of labor disputes has increased significantly after 2008. The employees are not at cost risks if they initially claim a substantial amount, no matter if reasonable or not. On the contrary, the employer often bears the burden of proof and needs to invest in significant management efforts for preparing and carrying out the arbitration procedure.

In practice, arbitrators may try to persuade the parties to accept a settlement, and there can be one or several oral hearings. Only after the arbitration award is rendered, the parties can apply for court proceedings. Experience shows that only few arbitral awards are later changed substantially in the court proceedings. That is the main reason for spending sufficient efforts in this first instance, to achieve the best possible result through a careful arbitration strategy.

4.3. Labor court proceedings

If the parties cannot reach an agreement before the arbitration commission or one of the parties is unwilling to accept the arbitration award, they may start a lawsuit at the competent People's Court. Statutory time limits shall be observed.

In general, the trial can go through up to two instances. Each instance can last approximately six months, or also significantly longer in more complex cases. The proceedings may involve one or more oral hearings, in which evidence and legal arguments are exchanged.

5. SOCIAL INSURANCE

5.1. Introduction

The first nationwide Social Insurance Law came into effect in 2011. The social security system in the PRC consists of five pillars: basic pension, basic medical insurance, work-related injury insurance, unemployment insurance and maternity insurance.

While the basic pension shall be unified across the whole country, the aim for unifying other insurances has only been set at the province level. The personal entitlements to the basic pension, basic medical insurance and unemployment insurance shall ultimately be nationwide transferable.

Individual persons conducting businesses, part-time employees and freelancers can voluntarily contribute to the pension and medical insurance, and thereby obtain the rights to benefits.

Contribution rates are determined by the local governments. There are also different local minimum and cap amounts for the contribution basis, which usually will be adjusted (increased) annually. The cap amount is usually three times the local average monthly salary in the preceding year. For example, in 2013 the cap in Shanghai was CNY14,076/month, as of July 2025 it has already increased to CNY 37,302/month. In the past years, the incidental wage costs have heavily increased.

Below are exemplary the maximum monthly contributions as of July 2025 in Shanghai calculated based on the cap amount of the contribution basis (all in CNY). If the employee has a lower salary (the exact contribution basis is to be checked based on the local rules), such lower salary shall be used as contribution basis:

Social Insurance and Housing Fund Contributions in Shanghai (as of July 2025)	Employer	Employee
Average monthly salary of the previous year up to capped contribution basis (i.e. at least CNY 7,460 and up to CNY 37,302 per month for social insurance, and at least CNY 2,690 and up to CNY 37,302 per month for housing fund)		
Basic Pension	16%	8%
Basic Medical (including Maternity)	10%	2%
Unemployment	0.5%	0.5%
Work-related injury	0.16-1.52%	
Housing fund	5% - 7%	5% - 7%
Total	31.66 - 33.02% 33.66% - 35.02%	15.5% - 17.5%

The timely and full payment of social insurance contributions in accordance with the statutory provisions is a mandatory legal obligation for both employers and employees. Any agreement that omits or underestimates the payment of social insurance contributions is void from the outset, as it violates mandatory legal provisions. In such cases, employees may terminate their employment contract with immediate effect and demand statutory severance pay from their employers, as well as compensation for losses incurred because of non-payment or underpayment of social insurance contributions. The competent tax authority may demand that the employer pay social security contributions in arrears, interest on arrears, and fines, without these being subject to a statute of limitations.

5.2. Basic pension

In addition to the public pension fund, each employee has a personal account. The contributions made by the employer flow into the public funds while the personal contributions of the employees go into the personal account. Only the entitlements in the personal account can be inherited. In principle, an early disbursement before reaching the statutory retirement age is not allowed (exceptions exist for foreigners).

Starting from January 1, 2025, in general the statutory retirement age of male employees, whose original statutory retirement age was 60 years old, and female employees, whose original statutory retirement age was 55 years old, will be gradually deferred by one month every four months to 63 years old and 58 years old, respectively. For female employees whose original statutory retirement age was 50 years old, the statutory retirement age will be gradually deferred by one month every two months to 55 years old. For example, a female employee born in April 1970, whose original statutory retirement age was 55 years old, her new statutory retirement age is 55 years old plus 1 month, so she will reach the statutory retirement age in May 2025. The new statutory retirement age of an employee can be calculated by using the official online calculator: <https://si.12333.gov.cn/304650.jhtml>.

Starting from January 1, 2030, the minimum contribution period for employees to receive monthly basic pension shall be gradually increased from 15 years to 20 years, with an annual increase of six months. For example, in 2030 an employee shall have contributed to the state-run pension fund for at least 15.5 years before becoming eligible for pension benefits; in 2035, for at least 18 years and in 2039, for at least 20 years. If an employee has reached the statutory retirement age but not yet completed the minimum number of years of contributions, he or she may extend his or her contributions or make a lump-sum contribution to reach the minimum number of years of contributions to receive his or her monthly basic pension.

An employee may opt for early retirement if:

- he or she has reached the minimum number of years of contributions for the year corresponding to the chosen early retirement;
- the maximum period of early retirement chosen by the employee may not exceed three years prior to the statutory retirement age;
- the early retirement age of the employee shall not be lower than the original statutory retirement age of 50 or 55 for female employees and 60 for male employees;
- the employee shall notify his or her employer in writing at least three months before the early retirement date of his or her choice.

In general, if an employee retires in accordance with the statutory retirement age, his or her employer shall apply for his or her retirement and complete all relevant procedures in a timely manner.

However, the retirement can be deferred if both the employer and the employee conclude a corresponding agreement. The employer and the employee shall specify the deferred retirement period and other relevant matters in writing one month in advance. The maximum deferred period shall not exceed three years from the statutory retirement age. After the deferred retirement period is determined, it cannot be extended again. The employer shall complete all relevant procedures for deferring the retirement with the competent authority without delay. The labor relationship continues during the period of deferred retirement. The employer and the employee may, by written agreement, terminate the deferred retirement and apply for retirement accordingly.

5.3. Basic medical insurance

The contribution to the basic medical insurance shall cease when the employee reaches the statutory retirement age.

Not all medical costs can be reimbursed by the medical insurance fund. This depends on the categories of the used drugs and services. Local governments issue the corresponding drug and service catalogues. There can also be certain rates and cap amounts for the reimbursement. Generally, settlement shall happen directly between the health insurance funds and hospitals / pharmacies.

5.4. Unemployment insurance

The employee must have contributed to the unemployment insurance for at least one year before he/she can claim for the unemployment payment. Other preconditions include that the unemployment must not have been intentionally caused by the employee, the employee must be registered as unemployed, and is trying to find a new job.

Depending on the amount of contributions, the employee may be entitled to unemployment payments for a period of 12 to 24 months. The amount of the payment is determined by the local governments and shall not be lower than the local minimum living standards.

5.5. Maternity insurance

The maternity insurance benefits include birth costs (contraceptives included) and the maternity allowance during the maternity leave. The exact amount of the benefits varies locally. In some provinces, the insurance fund pays the benefits directly to the employee while others would refund the paid amount to the employer. By end of 2019, the maternity insurance should have already been integrated into the basic medical insurance.

5.6. Work-related injury insurance

Whether a work-related injury or disease exists or not, depends on the official recognition decision of the competent authority. If the accident or disease is caused by crimes, alcohol or drug abuse, self-injury or suicide of the employee, it will not be recognized as work-related.

If an employee works from home in accordance with an agreement with their employer and there is sufficient evidence that an injury sustained during this time was in fact work-related, the fact that they were working from home should not prevent it from being recognized as a work-related injury. However, simple work-related communications that take place via modern means such as WeChat, telephone, or email and are temporary and incidental in nature should not be considered work-related circumstances.

The insurance benefits may include medical treatment costs, rescue costs, facilities for the disabled, care costs, one-time payment of medical expenses and monthly payments to the relatives. The costs that are eligible for reimbursement are defined in the corresponding catalogs.

5.7. Housing fund

Although managed similarly to the five social insurances, the housing fund is a separate tool to support employees regarding their housing, subject to a separate set of national and local regulations. After certain payments into the fund have accrued, the employee is able to withdraw amounts to support e.g. in the purchase, construction or renovation of self-used housing, in case of reaching the retirement age (account will be closed). Participants may also apply for preferential loans with the Housing Fund Management Centers.

6. FOREIGNERS

6.1. Immigration

In recent years, the PRC immigration related legislation and practice has been strengthened. The number of currently available visa types for foreigners are 16. Due to an enhanced catalogue of administrative sanctions, including police detention as deterrent, both PRC employers and foreign employees are strongly recommended to carefully observe all related laws and regulations, as well as the required administrative processes.

Depending on the individual case, e.g. the age of the foreigner and involved industry³, the proper visa and immigration option must be chosen. E.g., since 2015, handling procedures for short-term work assignments of less than 90 days regulate additional simplified procedures in such cases. On the other hand, the possibilities for foreigners to enter the PRC for internships has been drastically reduced, and many employers have stopped offering internships to foreigners altogether (unless they are enrolled for a longer term at a PRC university).

Since 2016/2017, China has revised the application process. Foreigners are qualified in three categories, with A as the highest for top talents, B for regular, and C for other foreign employees.

If the A-level category is achieved, the foreigner enjoys favorable treatment, including:

- No age restrictions applying (except for post-doctorates who need to be under 40)
- No prior working year requirements
- Being allowed to confirm by oneself that no criminal record exists
- Shorter processing times by the authority
- Work permit validity term up to 5 years

This category can be achieved via various channels: special talent introduction programs (e.g. the “1000 Talents Plan” of Shanghai), in case of special awards (Nobel Prize). But normally either the employee’s and the company’s qualification (e.g. salary level, employment as senior manager in a Fortune500 or “encouraged” enterprise) may entitle to apply for this category. Another possibility is to score 85 points or higher in the scoring system, but the required evidence may make this option less practically convenient.

For B-level category, at least a bachelor degree and minimum 2-year work experience are required. In general, the foreigner must be under the age of 60. Additionally, he/she needs to be employed as manager, professional technician, chief representative or foreign language teacher. Another possibility is to score 60 to 84 points in the scoring system.

Below are shown as an example the main steps a foreigner has to take to legally work in China.

Step 1 - Obtained by employer in the PRC

Work Permit Notice

Step 2 - Obtained by employee at PRC Embassy / Consulate where he/she resides

Z-visa (work visa)

Step 3 - After entry of the PRC with Z-visa, all below to be completed within 30 days

Temporary Residence Registration (within 24 h)

Medical checkup

Work Permit

Residence Permit

³ Special visas are required for e.g. journalists, airline crew.

Foreigners who have lived in China for four years or longer and meeting other requirements can also apply for a “Foreign Permanent Residence ID Card” (so-called Chinese Green Card). Normally, the card will be issued with a validity of 10 years and substantially increases convenience:

- no need to regularly re-apply for a residence permit,
- replacing the foreign passport in many transactions within mainland China (e.g. when boarding trains and planes, in banking transactions, during tax payments)

The application process for the Foreign Permanent Residence ID Card is lengthy and approval can take up to twelve months. Nevertheless, a work permit is recommended if the foreigner wants to work. In case of longer absences from China, it may not be possible to prolong the card’s validity.

6.2. Employment relationships with foreigners

If European companies establish representative offices or local subsidiaries (as a joint venture or wholly foreign-owned enterprise) in the PRC, they may also recruit foreign employees. Careful advance legal, social insurance and tax structuring is recommended to optimize the China engagement in such case.

Generally, a trend to the conclusion of local labor contracts can be observed. The maximum term for such labor contract is 5 years. Having a local labor contract in place can solve various issues, including issues concerning the compliance with immigration rules or the need to have an in substance correct written labor contract under PRC law. Most concerns of foreign employees towards a local contract can be solved through proper structuring:

- The employment relationship in the home country does not necessarily need to be fully terminated, but can be made dormant and consequently revives after the expatriate returns to the home country
- It may still be possible to participate in the social insurance system of the home country depending on the length of the China engagement and fulfillment of administrative processes (depending also on the involved home country and existence of a bilateral social insurance agreement)
- Identified deficits in insurance coverage can be covered through separate purchase of private insurance products
- The costs of locally paid salary occur directly at the entity where the benefits of the expatriate’s work are enjoyed (alternatively, fully taxable salary payments by other group entities may also work, the costs for which are then charged back to the PRC employer on arm’s length)
- The expatriate is subject to the same rules as any other (Chinese) employees

6.3. Social insurance for foreigners

Based on the Social Insurance Law, the foreigners are mandatorily required to participate in the PRC social insurance system “according to” legal requirements. Local implementation is notably different from location to location.

Politically, the PRC is interested in speedy negotiations and conclusions of further bilateral social insurance agreements with other countries, which would also benefit PRC nationals when working overseas. Until now, such agreements exist with several countries, including Germany, South Korea, Denmark, Canada, Finland, Switzerland, the Netherlands, Spain, Japan, Serbia, Luxembourg and Kyrgyzstan.

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