



AN OVERVIEW OF THE NEW PRC LABOR CONTRACT LAW

For the past 12 years, the PRC Labor Law has been the fundamental piece of legislation governing employment relationships in China. Specific provisions concerning labor contracts have traditionally been addressed in more detail in local-level regulations and ordinances. In many cases, standards and rules on the same labor contract issues varied from one province to another. That has now been changed by the new **PRC Labor Contract Law** (the "New Law"), which was promulgated on June 29, 2007 and will become effective as of January 1, 2008.

The New Law, undoubtedly, will bring significant changes to the legal and regulatory environment for labor relations nationwide. A critical understanding of the New Law will be indispensable for all companies and other employers. *Necessary actions will need to be taken for bringing current practice in line with the requirements posed by the New Law, including making revisions to existing labor contracts and personnel policy manuals.*

In the following paragraphs, we have prepared an executive summary of the key provisions and main changes introduced by the New Law.

1. Applicable Scope

The New Law applies to all employers (including state-owned, private and foreign invested companies and other forms of entities) and their employees within the PRC.

2. Employers' Internal Rules and Regulations on Labor Affairs

According to the New Law, internal rules and regulations on labor related affairs must be discussed with relevant labor union or employees' representatives first before they are finalized. When formulating, revising or adopting internal rules and policies that may affect the primary interests of employees, employers are required to submit such rules and policies to either an employees' representative committee or to all employees for discussion.

3. Written Labor Contract



A written labor contract must be signed with an employee within 1 month from the date on which the employee starts working for the employer. If the employer fails to do so, the employer will be under the obligation to pay the employee twice his or her usual remuneration for each month that the written contract remains outstanding.

4. Non-fixed-Term Contract

The New Law establishes 3 types of contract terms: fixed term, non-fixed term and project based. Non-fixed term contracts are those agreed between the employer and employee not to contain a definite expiry date. As a new rule, it is required that a non-fixed term contract shall be signed where an employee has had two consecutive fixed-term contracts and the employer has no qualified reason to terminate the employee's current fixed term contract.

In addition, if an employer fails to enter into any type of labor contract with an employee within 1 year from the date on which the employee begins providing services to the employer, the employee will automatically be regarded as having a non-fixed term contract with the employer. If an employer fails to conclude a non-fixed term contract in violation of the New Law, the employer must pay the employee twice his or her remuneration for each month commencing from the date on which the non-fixed term contract should have been concluded.

5. Probationary Period

With regard to probationary period, depending on length of the labor contract, the New Law sets forth following rules:

Length of Labor Contract (years)	Maximum Length of Probationary Period (months)
< 1	≤1
≥1 < 3	≤2
≥3	≤6

There can be no probationary period if an employment contract is project-based or has a fixed term of less than 3 months. In addition, the New Law requires that, during the probationary period, employers shall pay at least 80% or more of an employee's regular salary, and the salary may not be lower than the minimum wages in the location where the employer is based.

6. Job Training

The New Law allows an employer to enter into an agreement with an employee requiring a certain period of service if the employer provides job training at its expenses. An employee



violating the agreement may be required to reimburse the employer for the training expenses as stipulated in the contract, but not exceeding the training expenses actually paid by the employer.

7. Confidentiality and Non-compete

The New Law permits confidentiality agreements and non-compete agreements between employers and employees, but limits these to senior management personnel, senior technical personnel and other employees with an obligation to keep employer's information confidential. The non-compete period shall not be longer than 2 years. The employer is required to pay consideration on a monthly basis during the non-compete period after the termination or expiration of the labor contract. If an employee breaches a non-compete agreement, the New Law requires only that the employee pay liquidated and other damages caused by the breach. It is silent on whether an employer may seek injunctive relief in the event of violation.

8. Termination by Employees

An employee may terminate his or her contract without cause by providing the employer with 30 days' prior written notice. During his or her probationary period, the employee may terminate the contract with only 3 days' written notice. An employee may also terminate a labor contract immediately for cause, such as when the employer is violating the law or otherwise harms the employee's rights or health. If an employee terminates a contract with cause, the employer is required to pay him or her applicable severance.

9. Termination by Employers

The New Law provides that an employer may terminate a labor contract with the consent and agreement of the employee, for cause, under special circumstances or as a result of a breach of labor contract by the employee. If the employer proposes to terminate the contract and the employee agrees, the contract can be terminated, but the employer must pay applicable severance. Severance is not required if termination is proposed by the employee. The New Law also provides for certain causes an employer may terminate a contract with an employee with immediate effect and no obligation to pay severance. Further, an employer may terminate an employee under certain circumstances, provided that the employer gives the employee 30 days' advance notice and pays applicable severance. If none of these circumstances apply, an employer may still terminate a contract; however, an employer terminating an employee without statutory or contractual basis is required to pay double the severance amount.

10. Severance Payment

Monetary compensation shall be paid to employees, calculated as 1 month's salary for each year



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of service. For more than 6 months but less than 1 year's service period, the monetary compensation is 1 month's salary. For a service period of less than 6 months, the monetary compensation payable is 1/2 month's salary. For employees whose monthly salary is 3 times more than the local average monthly salary officially published, monthly severance is set at 3 times of the local average.

11. Part-time Employees

According to the New Law, a part-time employee is defined as an employee who generally works no more than 4 hours per day and no more than 24 hours per week for an employer. Oral agreements may be concluded for part-time employment. Either party may notify the other of the termination of part-time employment at any time. Monetary compensation is not required for such termination.

We hope that our newsletter is helpful. If you have any questions about the New Law, please feel free to contact us.

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