

China Adopts New Paid Annual Leave System



Ricky Luo
Attorney-at-law
Phone (Dir): (86-21)6235 1381
E-mail: ricky.luo@jadefountain.com

Ricky advises both domestic and international clients in relation to mergers and acquisitions, venture investments, capital markets, foreign direct investment, general corporate and business matters.

On December 7, 2007, the State Council promulgated the Regulation on Paid Annual Leave of Enterprise Employees (“Regulation”), which has come into effect on January 1, 2008. For implementation purposes, the Implementing Measures on Paid Annual Leave of Enterprise Employees (“Implementing Measures”) were promulgated by the Ministry of Human Resources and Social Security on September 18, 2008 and the Implementing Measures came into effect as of the same day. The main regulatory requirements of the two new rules are summarized as follows.

Pursuant to the Regulation and Implementing Measures, employees that have been working for a consecutive period of more than one year shall be given, as listed in the following table, certain days of annual leave depending on their number of accumulated service years:

The annual leave may be arranged in a concentrated period or in several periods of time within one year, but it generally shall not span beyond one year. Subject to the consent of the employees, the employers may make annual leave arrangement for their employees that span beyond one year for special work and production related reasons.



Accumulated Service Years	Days of Annual Leave
More than 1 year but less than 10 years	5 days
More than 10 years but less than 20 years	10 days
More than 20 years	15 days

In case of annual leave due and not taken by the employees, the employer is required to pay compensation to those employees, the procedures and levels of such compensation shall differ depending on who waives the annual leave. If an employer requires its employee to forgo his or her annual leave due to work obligations, it must obtain the consent of the employee and provide compensation in an amount equal to 300% of the employee's daily pay ("Compensation for Annual Leave", inclusive of the employee's regular working time pay) for each day of annual leave due and not taken. On the other hand, if an employee on his or her own accord chooses to waive annual leave and so requests in writing, the employer is only required to pay the employee at the rate of his or her daily pay for each day of annual leave due and not taken, in which case the Compensation for Annual Leave does not apply.

When a labor contract is terminated, an employer shall provide the employee with Compensation for Annual Leave equal to 300% of the daily pay for each day of the pro-rated annual leave due but not taken in the current year.

It is explicitly provided by the Implementing Measures that, if a labor contract or a collective labor contract or by-laws of an employer provides more days of annual leave or higher amount of Compensation for Annual Leave than those required by the laws, those provisions of such contract or by-laws shall apply.

In light of the effect of these new rules concerning paid annual leave, employers are advised to take following steps for administration and compliance purposes.

Employers shall review and adjust their existing paid annual leave systems so as to ensure the compulsory minimum requirements are complied with.

Prior to hiring an employee, employers shall obtain necessary records for confirming the number of the accumulated service years, which shall be taken as the basis for calculating the employee's minimum compulsory annual leave.



An internal system shall be established for effectively monitoring the current usage status of annual leave. Employees shall be formally reminded of and required to use up their entitled annual leave and such actions shall be properly documented in writing. In case an employee waives his or her right to certain days of annual leave, such waiver must be signed by the employee and properly documented by the HR department.

For those employers which provide more days of annual leave than the minimum compulsory requirements, such employers may consider defining such additional days as allowed personal leave subject to the employers' discretionary approval, as once defined as paid annual leave, the compensation mechanisms imposed by the new rules will apply.

Prior to the termination of one employee, such employee's annual leave situation shall be reviewed and the employee, unless otherwise required for work related reasons and the employer is willing to incur the additional compensation costs, shall be required to use up all unused days of annual leave.

SHANGHAI OFFICE

31st Floor, Tower B, Far East International Plaza, 317 Xian Xia Road
Shanghai 200051, P.R.China
Tel:(8621) 6235 1488 Fax:(8621) 6235 1477
Website: www.jadefountain.com

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