

LABOUR & EMPLOYMENT 2023

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LEGISLATION AND AGENCIES

Primary and secondary legislation

1 | What are the main statutes and regulations relating to employment?

The main statutes and regulations relating to labour and employment at the national level are:

- the [Law on the Protection of Women's Rights and Interests](#) (3 April 1992, as amended on 28 August 2005, 26 October 2018 and 30 October 2022) (the Women's Protection Law):

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- the [Measures for Security Assessment for Cross-Border Data Transfers](#) (1 September 2022);
- the [Personal Information Protection Law](#) (1 November 2021);
- the [Data Security Law](#) (1 September 2021);
- Interpretation (I) of the Supreme People's Court on Issues on the Application of Law in the Trial of Labour Dispute Cases (1 January 2021);
- the [Civil Code](#) (1 January 2021);
- the [Notice on Further Regulating Recruitment and Promoting Women's Employment](#) (18 February 2019);
- the [Cybersecurity Law](#) (1 June 2017);
- the [Joint Implementation Pilot Scheme of Maternity Insurance and Medical Insurance](#) (19 January 2017);
- the [Measures Announcing Significant Violations of Labour and Social Security Laws](#) (1 January 2017);
- the [Interim Provisions on Labour Dispatch](#) (1 March 2014);
- the [Regulations on Exit-Entry Administration for Foreign Nationals](#) (1 September 2013);
- the Interpretation of the Supreme People's Court on Several Issues on the Criminal Cases of Refusing to Pay Labour Remunerations (23 January 2013);
- the [Special Rules for Labour Protection of Female Employees](#) (28 April 2012);
- the [Social Insurance Law](#) (1 July 2011);
- [Amendment \(VIII\) to the Criminal Law](#) (1 May 2011);
- the [Implementing Regulations for the Labour Contract Law](#) (18 September 2008);
- the [Labour Disputes Mediation and Arbitration Law](#) (1 May 2008);
- the [Regulations on Paid Annual Leave of Employees](#) (1 January 2008);
- the [Labour Contract Law](#) (1 January 2008, as amended on 1 July 2013);
- the [Employment Promotion Law](#) (1 January 2008, as amended on 24 April 2015);
- the [Labour and Social Security Supervision Regulations](#) (1 December 2004);
- the [Collective Contract Regulations](#) (1 May 2004);
- the [Regulations on Minimum Wages](#) (1 March 2004);
- the [Regulations on Work-Related Injury Insurances](#) (1 January 2004, as amended on 1 January 2011);
- the [Occupational Disease Prevention Law](#) (1 May 2002, as last amended on 29 December 2018);
- the [Interim Regulations on Collection and Payment of Social Insurance](#) (22 January 1999, as amended on 24 March 2019);
- the [Administrative Provisions on Employment of Foreigners in China](#) (1 May 1996, as amended on 13 March 2017);
- the [Regulations on Labour Working Hours](#) (1 May 1995);
- the [Regulations on Medical Care Period for Enterprises' Employees for Illness or Non-Work-Related Injury](#) (1 January 1995);
- the [Labour Law](#) (1 January 1995, as amended on 27 August 2009);
- the [Interim Rules on Salary Payment](#) (1 January 1995);
- the [Trade Union Law](#) (3 April 1992, as amended on 27 October 2001 and 27 August 2009); and
- the [Individual Income Tax Law](#) (10 September 1980, as amended on 1 January 2019).

The Labour Law is the fundamental statute governing labour and employment matters. There has been no substantial amendment since it was first enacted in 1995. The other significant piece of legislation governing the employment relationship is the Labour Contract Law, which came into effect on 1 January 2008.

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The implementing regulations for the Labour Law were introduced in 2008. Many of the provisions in the Labour Law are restated or supplemented in the Labour Contract Law and its implementing regulations to make them easy to implement and reduce ambiguities. These two laws set out the basic principles for employment relationships in China, but their implementation and enforcement rely on various regulations or rulings by the governmental agencies in charge of labour matters at the national, provincial and local levels. Given that such regulations are not always clearly expressed or consistent with one another, the relevant governmental agencies in charge of labour administration usually have broad discretion to interpret such regulations in practice. In addition to national legislation, governments at provincial and municipal levels are authorised to make rules to regulate labour and employment matters according to the local situation. Such local legislation constitutes an integral part of Chinese labour and employment laws. Finally, judicial interpretations of national laws by the Supreme People's Court provide practical guidelines to local courts in trying labour or employment cases.

Protected employee categories

2 | Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Discrimination and sexual harassment are generally prohibited by law and an affected employee may file a lawsuit to ask for damages if an employer violates such principles in the relevant legislation. The non-discrimination laws – which include the Women's Protection Law, the Law on Protection of Disabled Persons, the Employment Promotion Law and the Employment Service and Employment Management Regulations – require employers to offer equal employment opportunities, terms and conditions to applicants and employees regardless of their gender, ethnicity, race, physical condition (eg, disability, infectious disease carrier), residency status or religious belief. The Trade Union Law also provides that blue- and white-collar workers whose main source of livelihood is their wages are entitled to take part in and organise a trade union regardless of ethnicity, race, gender, occupation, religious belief or level of education. Also, the Employment Service and Employment Management Regulations prohibit employers from incorporating any discriminatory content in their recruitment materials.

On 1 January 2023, the most recent amendments to the Women's Protection Law took effect, the most significant areas of which address equality for female employees, the prevention of sexual harassment and the handling of sexual harassment complaints in the workplace. These new provisions have the force of law, as opposed to prior notices and regulations, which had less value.

The Women's Protection Law prohibits sexual harassment against women. Victims are entitled to file complaints with competent governmental agencies and to bring civil suits against the harassers. The amendments clarify as a matter of national law that sexual harassment can take multiple forms, whether spoken, in writing or through physical acts. The amendments place affirmative obligations on employers to prevent sexual harassment in the workplace and to investigate complaints of sexual harassment. These provisions complement article 1010 of the Civil Code, which also stipulates that employers are obliged to prevent and stop sexual harassment in the workplace and defines sexual harassment in a similar manner. Local, older regulations provide further guidelines on the definition

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of 'sexual harassment' as well as the duties of employers to address sexual harassment complaints and prohibit retaliation against the complainant. In the event of a violation of the prohibition on sexual harassment in the workplace, the employer or the relevant authorities are directed to impose disciplinary action on the entity's responsible person, as well as the other directly liable individuals.

The Women's Protection Law further prohibits employers from discriminating against female applicants in recruitment and against female employees or contractors with respect to pay and benefits, emphasising that 'equal pay for equal work shall be applied to men and women alike'. With respect to recruitment, the Women's Protection Law confirms that employers are prohibited from:

- advertising that job opportunities are not available to women;
- refusing to employ a woman based on her gender;
- inquiring about a woman's marital or parental status or plans; and
- including a pregnancy test in a health check.

Further, the amendments include specific financial penalties for violating the prohibition on discrimination in recruitment and equal pay provisions.

Finally, the Women's Protection Law repeats and emphasises other rights for female employees, such as protections against termination (including contract expiration) while they are pregnant, on maternity leave or in the nursing period (which is the one-year period from childbirth to the child's first birthday), and against reductions in wages and benefits as a result of, for example, marriage, childbirth or nursing leave. The Women's Protection Law also requires that employers routinely arrange specific medical examinations for their female employees, including for gynaecological and breast diseases, and other sex-related or sex-specific conditions.

Enforcement agencies

3 | What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The primary government agency in charge of labour law enforcement is the Ministry of Human Resources and Social Security, including its counterparts at the provincial, municipal and district levels. These government agencies are authorised to order non-compliant employers to take corrective measures or impose administrative penalties on employers under certain circumstances. However, in practice, enforcement often relies on the local labour arbitration commission or courts when a party files a lawsuit.

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WORKER REPRESENTATION

Legal basis

4 | Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

According to the Trade Union Law, employees may establish trade unions voluntarily and employers are prohibited from restricting this right. Provincial and municipal governments have also promulgated local regulations to implement the principles set out in the Trade Union Law. China has only one overall trade union, the All-China Federation of Trade Unions, under which many provincial, municipal and local branches and divisions are established.

An employer that is unionised is required to contribute a minimum percentage of gross salaries to the trade union on a monthly basis. A portion of the dues is provided to the trade union set up within the employing entity and the remainder is paid to the external, higher-level unions. The Trade Union Law is not clear as to whether or when an employer is required to establish a trade union, but if there are at least 25 trade union members in the company, the company is mandated to set up a trade union committee within the company.

Powers of representatives

5 | What are their powers?

According to the Trade Union Law, the basic goal of a trade union is to safeguard the legitimate rights and interests of employees. The Trade Union Law and the Labour Contract Law give a trade union the following powers:

- to request that an employer rectifies its violations of regulations related to the employees' representative congress system and other democratic management systems;
- to assist and provide guidance to employees when executing employment contracts with the employer;
- to represent employees as they conclude a collective bargaining agreement with their employer;
- to require that an employer bear liability under the law when an employer violates a collective bargaining agreement (a trade union also has the right to file for arbitration if the labour dispute cannot be resolved through friendly negotiations and a trade union may presumably file a lawsuit if filing for arbitration is rejected or if the trade union is not satisfied with the arbitral award);
- to raise objections to improper disciplinary actions imposed by an employer;
- to be consulted before an employer unilaterally terminates an employee (if the trade union's opinion favours the employee, the employer must take the trade union's opinion and report into consideration in its final decision);
- to investigate an employer's violation of an employee's legitimate rights (the employer must assist in the investigation);
- to provide support and assistance according to the law when an employee applies for arbitration or files a lawsuit;
- to negotiate with an employer as it drafts company policies related to employee benefits, such as salary, working hours, annual leave, work safety, social insurance, benefits and

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- training (a trade union also has the right to request that an employer revise improper company policies); and
- to express its opinion in the event of economic lay-offs (the employer must give 30 days of prior notice to the trade union and consider the opinions of the trade union in its formal lay-off plan).

BACKGROUND INFORMATION ON APPLICANTS

Background checks

- 6** | Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

In practice, employers may engage professional firms to conduct reasonable background checks on applicants, but such third parties should hold the proper qualifications and act within the boundaries of the applicable laws and regulations.

However, the disclosure of certain types of personal or sensitive information during a background check requires consent by the applicant, particularly concerning information related to health status or other sensitive personal matters. The Cybersecurity Law (CSL) and the Personal Information Protection Law (PIPL) require any potential employer or background check service provider to provide explicit notice to the data subject on the types of information to be collected, and the method, purpose and scope of data collection and use. Further, the potential employer or background check service provider must obtain the consent of the data subject before collecting, using or sharing any personal information. The CSL and the PIPL also mandate that the potential employer or the background check service provider take technological or other actions to ensure the confidentiality and protection of the personal information collected from the applicant.

In addition, the Data Security Law and the PIPL require that a security assessment be conducted with respect to the export of important data by the operators of critical information infrastructure. Special administrative measures have been issued with respect to the security of the export of important data collected and generated within China by other data processors.

Medical examinations

- 7** | Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Generally, employers may require applicants to undergo a medical examination to determine whether their health conditions meet the requirements of the positions. In practice, employers may determine the particulars of such an examination based on specific job duties and require applicants to submit their examination reports. Blanket requirements for medical examinations were common until 2008 when the government restricted the use of medical examinations to learn whether an applicant was a hepatitis B or other infectious disease carrier. Once the Employment Promotion Law came into effect on 1 January 2008, it

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became unlawful for an employer to require an applicant or employee to undergo a hepatitis B test, request a report of such a test or enquire as to whether the applicant is a hepatitis B carrier. Except for special occupations approved and announced by the Ministry of Health, such a medical examination may not include a hepatitis B test, unless requested by the applicant.

Current laws and regulations in China do not state whether an employer may refuse to hire an applicant who does not submit to a medical examination. In practice, this is analysed on a case-by-case basis.

Drug and alcohol testing

8 | Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no restrictions or prohibitions under the current laws and regulations in China regarding drug and alcohol testing from a job recruitment perspective. In practice, however, some employers may request applicants to undergo drug or alcohol abuse testing in consideration of specific job duties and requirements. Such testing is not common among multinational employers.

Similarly, because the current laws and regulations in China do not indicate whether an employer may refuse to hire an applicant who does not submit to such a test, this is analysed on a case-by-case basis.

HIRING OF EMPLOYEES

Preference and discrimination

9 | Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

According to the Labour Law, the Employment Promotion Law and other labour rules and regulations, employers may not, during the recruitment process, discriminate against women, disabled persons, ethnic minorities, applicants who are carriers of infectious diseases, applicants who come from rural locations and hold rural household residency or secondees if dispatched to employers by any staffing firm.

Under Chinese labour and employment laws, if an employee is laid off for reasons such as a bankruptcy reorganisation, difficulties in production or business operations, adjustment of the enterprise's business methods or material changes in the economic conditions, the employee will have priority if the employer intends to recruit new staff within six months.

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Written contracts

10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

According to the Labour Contract Law, an employer should execute a written employment contract with an employee within one month of the employee commencing work, and both the employer and the employee should retain an original contract. If an employer fails to sign an employment contract within one month, for the period commencing from the first day of the second month and ending on the last day of the 12th month, it must pay twice the monthly salary of the employee for each month for which services were provided without a written employment agreement. The employment will be deemed open-ended if an employer fails to enter into a written employment agreement with an employee within one year of the employee commencing work. Such open-ended employment cannot be terminated unless otherwise explicitly authorised by law.

The essential terms of an employment contract are:

- the employer's name and address, and the name of its legal representative or chief person;
- the employee's name, address and identification number;
- the term of the employment contract, including the probationary period;
- the nature of the employee's job duties, work requirements and workplace;
- the employee's working hours, leave and holiday entitlements;
- the employee's remuneration;
- social insurance;
- labour protection, working conditions, and professional hazard prevention and protection; and
- other information as may be necessary for specific employment contracts.

As a result of the covid-19 pandemic and in recognition of the practical difficulty in having employees and employers execute hard-copy employment contracts, on 4 March 2020, the Ministry of Human Resources and Social Security issued the Letter of the General Office of the Ministry of Human Resources and Social Security on Issues Related to the Conclusion of Electronic Employment Contracts in response to the Request for Instructions on Electronic Employment Contract Management During the Covid-19 Period from the Beijing Labour Bureau. The letter stipulates that employers and employees may agree to sign employment contracts electronically. In addition to the employment-related laws and regulations, the execution of an electronic employment contract should follow the requirements under the Electronic Signature Law, including that:

- the electronic employment contract is executed using a reliable electronic signature and data message that can be identified as the written form by law; and
- the employer should ensure that the formation, transmission and preservation of the electronic employment contract are complete, accurate and not falsified.

Nonetheless, once conditions permitted hard-copy contracts to be executed, the best practice was for employers to re-execute the employment contracts in hard-copy form so that the parties could each retain an original, as required by the Labour Contract Law.

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Fixed-term contracts

11 | To what extent are fixed-term employment contracts permissible?

There are three types of employment contracts under Chinese law, namely:

- fixed-term employment contracts;
- open-ended employment contracts; and
- employment contracts with a specified period to complete the prescribed work.

In practice, most employment contracts are fixed-term contracts. There is no maximum duration for such contracts. When concluding or renewing an employment contract with an employee under any of the following circumstances, an employer is generally obliged to enter into an open-ended employment contract unless the employee requests to conclude a fixed-term employment contract:

- the employee has worked under two consecutive fixed-term contracts and the employment relationship is to continue;
- the employee has worked for the employer for more than 10 consecutive years; or
- the employer has not signed any written employment contract with the employee for more than a year.

However, in practice, foreign employees (not including employees from Hong Kong, Macau or Taiwan) should not receive open-ended contracts because the maximum term of a work permit is five years and many local authorities will issue a work permit to a foreign employee only when the term of the employment contract is consistent with the term of the work permit.

Probationary period

12 | What is the maximum probationary period permitted by law?

The probationary period varies depending on the nature and term of the relevant employment agreement as stated in the table below.

Term of labour contract	Maximum term of probation
Less than 3 months or a contract with a term to expire upon completion of certain work	No probation allowed
3 months or more but less than 1 year	Up to 1 month
1 year or more but less than 3 years	Up to 2 months
3 years or more, or open-ended employment	Up to 6 months

Employers may impose only one probationary period throughout the term of employment. An extension of the probationary period beyond the maximum period stipulated by the Labour Contract Law is generally not allowed.

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Classification as contractor or employee

13 | What are the primary factors that distinguish an independent contractor from an employee?

Generally, Chinese law does not recognise the concept of an independent contractor. In practice, labour arbitration tribunals or courts tend to recognise the establishment of an employment relationship if the following main conditions are satisfied:

- the employer and the individual are both legally qualified to enter into an employment relationship under the applicable laws and regulations;
- employment-related rules and policies of the employer apply to the individual and the individual works for remuneration under the management and supervision of the employer; and
- the work carried out by the individual is an integral part of the employer's business.

An individual is legally qualified to enter into an employment relationship if such an individual is at least 16 years of age, is not older than the relevant retirement age and is not a matriculating student.

Temporary agency staffing

14 | Is there any legislation governing temporary staffing through recruitment agencies?

According to the Labour Contract Law and the Interim Provisions on Labour Dispatch, recruitment agencies shall apply for and obtain labour dispatch operation permits from competent human resources authorities to engage in staffing businesses. Employers should engage staffing firms with valid permits. Temporary staff will enter into fixed-term labour contracts for at least two years with qualified recruitment agencies and be dispatched to the employer. However, the roles of such dispatched employees are limited to those of a temporary, auxiliary or substitute nature.

There are some additional restrictions or requirements for an employer's use of staffing services. For instance, if a dispatched employee works for more than six consecutive months, this role will not qualify as temporary and, as a result, the arrangement arguably breaches the regulatory restrictions. Also, if an employer plans to engage dispatched employees to work in auxiliary positions, it should consult the trade union or employees and make an announcement to all employees before it may fill these positions with dispatched workers.

Further, the regulations require that the number of dispatched employees shall not, in any event, exceed 10 per cent of the total number of employees. This rule is designed to prevent any abuse by using dispatched employees to bypass legal obligations otherwise owed to non-dispatched employees. Dispatched employees, as a matter of law, are entitled to equal pay treatment as other employees in the same positions and discrimination is not permitted. Significantly, the Interim Provisions of Labour Dispatch have a general anti-abuse provision that prohibits employers from using staffing services in the name of outsourcing when the substance of the arrangement is labour dispatch. While there are

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no regulations differentiating good-faith outsourcing from labour dispatch, the courts will examine the specific facts on a case-by-case basis.

FOREIGN WORKERS

Visas

- 15** | Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There is no numerical limitation on short-term visas. Visas are available for employees transferring from a corporate entity in a foreign jurisdiction to a related entity in China. A foreign applicant (not including applicants from Hong Kong, Macau or Taiwan), may apply for a work visa on the condition that the applicant meets all requirements and submits all documents to the governmental entities as required by the applicable regulations. Before a foreign applicant applies for a work visa, the prospective employer must first obtain an employment authorisation certificate from the governmental entities for the foreign applicant as part of the application process.

Spouses

- 16** | Are spouses of authorised workers entitled to work?

Spouses of authorised foreign workers are not allowed to work in China. Spouses of authorised foreign workers may only work in China if they obtain independent employment. After their prospective employer obtains an employment authorisation certificate from the relevant governmental authorities and subsequently obtains a work permit from the relevant governmental entities, spouses of authorised foreign workers are allowed to work.

General rules

- 17** | What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker who does not have a right to work in the jurisdiction?

If a foreign national does not obtain the right of permanent residence but engages in work in China, the local entity in China that intends to employ the foreign national is required to sponsor and apply for a work permit for the foreign national. An employer may only employ a foreign national with valid work and residence permits issued by the relevant governmental entities.

An employer who hires a foreign national without a proper visa and work permit may be fined 10,000 yuan for each foreign national who is illegally employed, capped at 100,000 yuan, and any income (if any) generated by illegally employed foreign nationals shall be confiscated. Further, a foreign national who works in China without a proper visa and work permit may be subject to a fine of between 5,000 and 20,000 yuan, and may additionally be detained for a period ranging from five to 15 days or deported from China, or both, depending on the

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seriousness of the violation. Foreign nationals who are deported from China will not be allowed to re-enter China for up to five years from the date of deportation.

The current rules, effective as of 28 July 2018, no longer require residents of Hong Kong, Macau or Taiwan to obtain work permits. This category of non-mainland-Chinese passport holders may enter, work and reside in China without a work permit.

Resident labour market test

18 | Is a labour market test required as a precursor to a short or long-term visa?

No labour market test is required as a precursor to a short-term or long-term visa. It is a basic principle under Chinese law and regulations that an employer may recruit foreign nationals for positions with special requirements when no domestic applicants are available for such positions. However, a labour market test need not be conducted before the recruitment of foreign nationals.

TERMS OF EMPLOYMENT

Working hours

19 | Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The general principle is that the daily working hours should not exceed eight hours and the weekly working hours should not exceed 40 hours. If an employer cannot guarantee the foregoing working hours system for any particular reason, the employer may apply an alternative working hours system with the approval of the local government authorities in charge of labour administration. If the employer needs an employee to work overtime, the employer may consult the trade union and the employee, and the overtime working hours generally should not exceed one hour per day. If longer overtime working hours are needed, they may not exceed three hours per day and the monthly overtime working hours may not exceed 36 hours, given that the employee's health must be guaranteed. However, there are exceptions to the aforementioned limitations on overtime working hours, namely:

- natural disaster, accident or other events that endanger health, life and property, and require emergency handling;
- malfunctions of manufacturing equipment, traffic line or public facilities that influence operations and public interest, and require urgent repair; and
- other circumstances prescribed by laws and regulations.

Also, employees are entitled to at least one rest day every week. Generally, an employee may not opt out of the above restrictions or limitations unless the employee consents to work under a government-approved alternative working hours system.

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Overtime pay – entitlement and calculation

20 | What categories of workers are entitled to overtime pay and how is it calculated?

An employee is entitled to overtime pay or benefits when working more than eight hours on a workday or 40 hours in a working week, or when working on a statutory holiday. Overtime pay is calculated as follows:

- overtime on a regular working day: at least one-and-a-half times the regular salary;
- overtime on an off-work or rest day: at least twice the regular salary (if compensatory time off is not provided); and
- overtime on a statutory holiday: at least three times the regular salary.

An employee may receive compensatory time off for overtime work performed on an off-work or rest day at the rate of one hour off for each hour worked.

However, the above calculations do not apply to employees who work under an alternative working hours system. The calculation of overtime pay for employees who work under an alternative working hours system is subject to special rules.

Overtime pay – contractual waiver

21 | Can employees contractually waive the right to overtime pay?

No. An employer must pay an employee for overtime work. In practice, any waiver of the right to overtime pay or a similar agreement will most likely be deemed unenforceable.

Vacation and holidays

22 | Is there any legislation establishing the right to annual vacation and holidays?

According to the Regulations on Paid Annual Leave of Employees, employees of authorities, organisations, enterprises, public institutions, private non-enterprises or individual private businesses (with hired staff) who have continuously worked for more than one year will be entitled to paid annual leave. The statutory annual leave entitlement is allotted as follows:

- for employees who have worked a total of at least one year but less than 10 years in aggregate: five days;
- for employees who have worked a total of at least 10 years but less than 20 years in aggregate: 10 days; and
- for employees who have worked a total of at least 20 years in aggregate: 15 days.

Service is measured against all employers, not just the current employer. Statutory holidays, rest days and other leave stipulated by law, such as marriage leave, bereavement leave and maternity leave, are not calculated as annual leave.

An employee is not entitled to paid annual leave for the current year under any of the following circumstances:

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- where an employee is legally entitled to a summer or winter holiday (or both) that is longer than his or her annual leave;
- where an employee takes at least 20 days of personal leave, and his or her salary is not deducted according to the regulations of the employer;
- where an employee who has worked a total of at least one year but less than 10 years in aggregate takes sick leave for more than two months;
- where an employee who has worked a total of at least 10 years but less than 20 years in aggregate takes sick leave for more than three months; or
- where an employee who has worked a total of at least 20 years in aggregate takes sick leave for more than four months.

Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

Under the Regulations on Medical Care Period for Enterprises' Employees for Illness or Non-Work-Related Injury, employees who suffer from a non-work related illness or injury are entitled to between three and 24 months of medical leave, depending on the employees' total working years in aggregate and the time spent working for the current employer:

- for an employee who has worked a total of less than 10 years in aggregate, if he or she has worked for his or her current employer for:
 - less than five years: three months; or
 - more than five years: six months; and
- for an employee who has worked a total of more than 10 years in aggregate, if he or she has worked for his or her current employer for:
 - less than five years: six months;
 - more than five years but less than 10 years: nine months;
 - more than 10 years but less than 15 years: 12 months;
 - more than 15 years but less than 20 years: 18 months; or
 - more than 20 years: 24 months.

For certain employees who suffer from certain diseases (eg, cancer, mental illness or paralysis), and are unable to recover within 24 months, medical leave can be extended, subject to the approval of the employer and the local labour authority.

Employers should pay sick leave wages under the terms of the labour contracts entered into with employees. Such sick leave pay will be no lower than 80 per cent of the local standard minimum salary, which varies depending on local regulations. For example, the minimum wage in Beijing has been 2,200 yuan per month since 1 July 2019, so the minimum amount of sick leave pay is 1,760 yuan per month. Subject to the minimum requirement for sick leave wages at the national level, authorities at the provincial or municipal level may implement a higher rate for sick leave pay to apply locally.

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Leave of absence

24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Marriage leave

Marriage leave is a minimum of three days, subject to specific circumstances and approval of the employer. Marriage leave may be extended by local government regulations. For example, local rules in Beijing extend marriage leave for all employees by seven days.

Parental leave

On 25 November 2021 and 26 November 2021, the Shanghai and Beijing municipal governments, respectively, introduced this form of leave that is new in China, presumably to encourage more couples to have more children. Parents in Shanghai and Beijing who have a child in accordance with the municipalities' Population and Family Planning Regulations are now entitled to five days of paid parental leave each year until the child reaches three years old.

On 1 December 2021, Guangdong Province issued similar regulations, but the entitlement for eligible parents is 10 days of paid parental leave each year. A number of other cities and provinces have issued similar local regulations.

Maternity leave

According to the Special Rules for Labour Protection of Female Employees, pregnant employees are generally given maternity leave of 98 days, including 15 days of antenatal leave. An extra 15 days of leave may be granted if the employee experiences a difficult childbirth. Employees who give birth to more than one baby in a single birth will be granted an extra term of maternity leave of 15 days for each additional baby. If an employee suffers an early termination after having been pregnant for less than four months, 15 days of leave will be granted. If an employee has an early termination after the fourth month of the pregnancy, 42 days of maternity leave will be granted.

Local legislation may provide additional maternity leave according to the Population and Family Planning Law. For example, maternity leave was extended by 80 days in Shenzhen to 178 days. On 25 November 2021 in Shanghai and on 26 November 2021 in Beijing, maternity leave was extended by 60 days to 158 days.

Paternity leave

While there is no national entitlement to paternity leave, local legislation generally provides male employees with some paid paternity leave. In Beijing, for example, the entitlement is 15 days. In Shanghai, the entitlement is 10 days.

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Elderly care leave

While there is no national entitlement to elderly care leave, some local regulations also provide elderly care leave, during which an employee who is an only child may be able to take care of his or her parents who are at least 60 years of age.

In Beijing, for example, the entitlement is 10 working days. The employee may be required to provide evidence showing that the parent requires care, such as a diagnosis or hospitalisation certificate from a medical institution, or an ability assessment from the relevant authorities. On 1 December 2021, Guangdong Province issued similar regulations permitting up to 15 days of paid leave in the case of the hospitalisation of an elderly parent for an employee who is an only child.

A number of other cities and provinces have issued similar local regulations. In Shanghai, however, there is currently no such leave.

Bereavement leave

Bereavement leave is generally one to three days, subject to specific circumstances and the approval of the employer. The applicable laws and regulations do not extend to multinational employers.

Mandatory employee benefits

25 | What employee benefits are prescribed by law?

Under national and local labour laws and regulations, employees are entitled to receive basic social benefits, including a pension, medical insurance, maternity insurance, work-related injury insurance, unemployment insurance and access to the housing fund. Also, employees have the right to enjoy statutory holidays, paid annual leave, marriage leave and maternity leave, among others. In some locations, such as Beijing and Shanghai, qualified employees are entitled to paternity leave and parental leave, the latter of which was introduced through local legislation in late November 2021.

Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

The principal rules regulating part-time employment are set out in the Labour Contract Law. Generally, an employee working on a part-time basis for one employer may not work more than four hours per day on average or above 24 hours per week. The employer and the part-time employee may have a verbal contract.

A part-time employee may enter into a labour contract with more than one employer, given that the contract entered into during the term of an existing contract may not influence the performance of an existing contract. No probationary period may be stipulated in a part-time labour contract, and either party may terminate the employment at any time and without any notice. Also, the part-time employee is not entitled to any severance upon termination. The hourly salary may not be lower than the minimum hourly salary published by the local

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government in the municipality in which the employer is located and part-time employees must be paid no less than every 15 days.

The rules regulating fixed-term employment are set out in the Labour Contract Law and its implementing rules.

Public disclosures

27 | Must employers publish information on pay or other details about employees or the general workforce?

Employers are not required to publish information on pay, or other details about employees or the general workforce. However, publicly traded companies (not including subsidiaries of multinational companies) are subject to certain disclosure requirements, including the names of senior management and information regarding their remuneration.

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

28 | To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

According to the Labour Contract Law, employees that may be subject to non-compete covenants are limited to an employer's senior management, senior technicians and other personnel with a confidentiality obligation. The scope, territory and term of such restrictions should be agreed upon between the employer and the employee, and such an agreement may not violate laws and regulations. Any non-compete covenants lasting longer than two years after the termination of the employment contract are not enforceable. Employees bound by non-compete obligations are entitled to monthly non-compete compensation payable by the employer during the non-compete period. Local legislation provides different standards regarding the amount of the non-compete compensation payable to an employee, but the amount of such compensation should be agreed to and documented in writing.

Clauses on the non-solicitation of either employees or company customers are not specifically addressed by the current employment-related laws and regulations. Therefore, their enforceability is unpredictable. While the common view is that no payment of additional consideration is required for the non-solicitation of employees, there is a risk that a Chinese arbitration commission or a court will deem the non-solicitation of company customers to be a form of non-compete obligation, which requires the payment of a financial consideration.

Post-employment payments

29 | Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Reasonable compensation is a precondition to the enforceability of the competition restrictions. Generally, the compensation may not be less than 20 per cent of the employee's

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average salary in the 12-month period immediately preceding the termination of the employment contract. Local regulations often provide the minimum compensation payable for non-compete restrictions to be enforceable.

For instance, in Shenzhen, the compensation may not be lower than 50 per cent of the employee's average salary in the 12-month period immediately preceding the termination of the employment contract. In Jiangsu Province, the monthly non-compete compensation should be no less than one-third of an employee's average monthly salary in the 12-month period immediately preceding the termination of the labour contract. If the amount of the consideration for the post-termination non-compete obligation agreed by the employer and employee is lower than the minimum salary periodically announced by the local government, the employer must pay an amount no less than the government-mandated minimum.

In Shanghai and Beijing, for example, while there is no statutory minimum requirement, 20 per cent and 30 per cent of an employee's average monthly salary in the 12-month period immediately preceding the termination of the labour contract, respectively, are often considered the minimum amounts that should be paid.

If, for any reason caused by the employer, the monthly compensation is not paid to the employee for three months, the employee may file a claim to terminate the non-compete covenant and obtain the non-compete consideration for those three months.

There is no specific requirement regarding the compensation for non-solicitation covenants, given the lack of regulation around them.

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

30 | In which circumstances may an employer be held liable for the acts or conduct of its employees?

It is a well-established legal principle that an employer will be held liable for damages caused by its employees in the course of the employees performing employment duties. In addition, if sexual harassment takes place in the workplace in violation of the Law on the Protection of Women's Rights and Interests, the employer's responsible person, in addition to the other directly liable individuals, should be held liable. Further, under the amendments to the Anti-Unfair Competition Law of 1 January 2018, employers may be vicariously liable for an employee's violations of that law, including commercial bribery.

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TAXATION OF EMPLOYEES

Applicable taxes

31 | What employment-related taxes are prescribed by law?

Employees are subject to individual income tax on wages, salaries, bonuses and other employment-related income. As a withholding agent under Chinese tax law, an employer is liable for withholding the applicable taxes and paying the same to the competent tax authorities upon payment to its employees. In practice, an employer will file tax returns monthly on behalf of its employees, as the standard pay cycle is monthly.

EMPLOYEE-CREATED IP AND CONFIDENTIAL BUSINESS INFORMATION

Ownership rights

32 | Is there any legislation addressing the parties' rights with respect to employee inventions?

According to the Patent Law, as amended, an employee invention is an invention completed by an employee in the course of performing duties for the employer or completed by substantially using the material and technical conditions of the employer during the employment term or within one year of its termination. The employer will have the right to apply for a patent for an employee invention and shall become the patentee upon approval. The employer and the employee inventor are allowed to enter into an agreement concerning the ownership of such an invention.

When the employer has been granted patent rights for an employee invention, it is required to reward the employee inventor and, when the patent is implemented, the employee inventor should be given reasonable remuneration according to the scope of implementation and the economic benefits subsequently received. Several Opinions on Strengthening the Protection of the Lawful Rights and Interests of Employee Inventors and Promoting the Implementation of Intellectual Property Rights, issued jointly on 26 November 2012 by the State Intellectual Property Office and other governmental agencies, provide specific rules that enhance the economic compensation that the employer should pay the employee inventor in the absence of a written agreement regarding the reward and remuneration for such a patent.

The Copyright Law, as amended, provides that a work created in the course of fulfilment of a work assignment by an employee belongs to that employee. The author of the work will be entitled to the copyright to such work and the employer will have priority in using such work within its scope of business. However, for the following works, the author will solely enjoy the right of authorship, and the employer will enjoy other rights of the copyright and may reward the author at its discretion:

- drawings of engineering designs, product designs, maps, computer software and other author works that are created mainly by using the materials and technical conditions of the employer, and for which the employer bears responsibility; or

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- author works, the copyright of which belongs to the employer according to the law or contract requirement.

The Copyright Law, as amended, further provides that, for two years after the completion of the employee's work, without the employer's consent, the author may not allow a third party to use the work in the same way that his or her employer does. The Implementing Regulations of the Copyright Law, as amended, offer explanations as to the meaning of the terms 'work assignment' and 'materials and technical conditions'.

Trade secrets and confidential information

33 | Is there any legislation protecting trade secrets and other confidential business information?

According to the Labour Law, the Labour Contract Law and the Contract Law, employers and employees may agree upon the protection of trade secrets and other proprietary confidential information in labour contracts or by signing separate confidentiality and non-compete agreements. Employees in breach of such confidentiality obligations shall be liable for compensation to employers for any loss caused. There could also be criminal liabilities under the Criminal Law, depending on the circumstances, which could result in serious consequences and up to seven years imprisonment for a blatant violation.

The Anti-Unfair Competition Law, as amended, prohibits any and all unauthorised possession, disclosure, use or permitting others' use of trade secrets that violates any confidentiality or similar obligations. If a third party knows or should have known that an employee (or a former employee) of the owner of a trade secret, or any other entity or individual, has obtained any unauthorised trade secrets, such a third party is also prohibited from obtaining, disclosing, using or permitting another party's use of that confidential information. The Anti-Unfair Competition Law, as amended, also requires regulatory bodies and their employees to keep trade secrets learned through their investigations confidential.

The Law on Promoting the Transformation of Scientific and Technological Achievements further provides for the protection of technical know-how and forbids any disclosure of, transfer of or competition based on such technical know-how by employees without employer authorisation.

DATA PROTECTION

Rules and employer obligations

34 | Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The protection of employee data is a fast-evolving area of law. While a new data protection regime has applied for employers since 1 November 2021 through the coming into force of the Personal Information Protection Law (PIPL), there are still many questions that are unanswered and will remain so until the ambiguous terms and general understanding of how the legislation will be enforced are clarified.

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Under the newly instituted personal data protection regime, which includes the Cybersecurity Law (CSL), the PIPL, the Measures for Security Assessment for Cross-Border Data Transfers and other related regulations, employers are required to obtain express consent from employees when collecting, using, processing, retaining and transferring their personal information outside of the employing entity and across international lines. Employers must also obtain separate and express consent to collect and process sensitive personal information. Further, employers should limit their collection of data to what is necessary for legitimate business purposes, although there is an exception to the need for express consent for the collection of personal data from employees for routine human resources management functions, which employers should define in their data protection policies.

The PIPL has greatly broadened the rights of employees with respect to their personal data by requiring employers to inform employees (and applicants, interns, etc) of how their personal data will be collected, the scope of what will be collected and why, how to access their personal data, where their personal data is stored and whom to contact if they have questions about that storage or processing, and that they can request that their personal data be transferred to a third party (express right of portability).

The Measures for Security Assessment for Cross-Border Data Transfers, which took effect on 1 September 2022, clarify under what circumstances a company must undergo a security assessment approved by the competent Chinese governmental authority before being able to legally export personal data, among other data, out of China.

Privacy notices

35 | Do employers need to provide privacy notices or similar information notices to employees and candidates?

Under the personal data protection laws and regulations (ie, the CSL, the PIPL and other related regulations), employers are required to obtain express consent from employees when collecting, using, processing, retaining and transferring their personal information outside of the employing entity, which includes the cross-border transfer of personal data of employees and applicants. The PIPL provides that separate consent is required for providing personal information to other data controllers, publicly disclosing personal information, processing sensitive personal information and transferring personal information out of China.

Employee data privacy rights

36 | What data privacy rights can employees exercise against employers?

Employers have the right to know the basic information of the employees that is directly related to the employment contract and employees are required to faithfully provide such information. No law or regulation provides a detailed definition of 'information related to the employment contract'. Employees may refuse to provide information that is not relevant to the employment contract, such as religious belief.

If an employer discloses its employees' personal data without authorisation or in violation of the law, it is an established civil law principle that a party that breaches another party's

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civil rights (including the right to privacy) may be liable for damages in respect of monetary losses and, where applicable, damages for mental distress. Therefore, the affected employees may file a civil lawsuit against the employer. The employer may also be subject to fines imposed by the competent authorities for the unauthorised or unlawful transfer of personal data, particularly if a complaint is received by an employee whose personal data was compromised in some way.

BUSINESS TRANSFERS

Employee protections

37 | Is there any legislation to protect employees in the event of a business transfer?

Yes, but indirectly, as terminations of employment are restricted to statutory grounds and there is no automatic transfer of employment from one entity to another entity. In the event of an asset acquisition in which the buyer wants any of the employees to transfer to its entity with business assets, the buyer will need to offer a new contract of employment, and the impacted employees will need to consent to the termination of employment with the current employer (the seller) and sign a new contract of employment with the buyer. Under the Implementing Regulations for the Labour Contract Law, the buyer should recognise each employee's total years of service with the seller and no severance pay will be due to employees who transfer from the seller. If the buyer does not recognise the employee's service with the seller, the employee is entitled to statutory severance pay for the termination of employment with the seller.

If, as a result of the business transfer, the employer intends to lay off any of its employees, depending on whether the number of employees involved meets the statutory amount to trigger a mass lay-off, the employer may need to go through the statutory procedures as specified by the Labour Contract Law by giving prior notice to the affected employees, carrying out a consultation with the affected employees and reporting the prospective lay-offs to the local labour administrative authorities. If the employer intends to terminate contracts of employment with certain employees outside a formal statutorily prescribed lay-off, it must first negotiate with such employees. The employer is also obliged to pay severance payments in such cases.

In the case of an equity transfer, the employment contract will not be affected and will continue to be performed.

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TERMINATION OF EMPLOYMENT

Grounds for termination

38 | May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

An employer may dismiss an employee only for cause. However, an employer may dismiss an employee with 30 days of prior notice or one month's salary in lieu of such notice in certain circumstances. The Labour Contract Law also provides for circumstances where an employer may dismiss an employee without prior notice.

Notice requirements

39 | Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Under certain circumstances, prior notice or one month's salary in lieu of such notice will be required.

An employer may dismiss an employee with 30 days of prior notice or one month's salary in lieu of such notice if:

- after the completion of medical treatment for an illness or non-work-related injury, the employee is unable to perform his or her original job or any other work position arranged for him or her by the employer;
- the employee is incompetent in his or her job and fails to make any improvement after training or adjustment of his or her position; or
- material changes in the objective circumstances have made the employment contract no longer executable, and the employer and the employee cannot reach an agreement on a change to the employment contract.

The Labour Contract Law provides for circumstances where an employer may dismiss an employee without prior notice.

Dismissal without notice

40 | In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

The Labour Contract Law provides that an employer may dismiss an employee without prior notice if the employee:

- fails to meet the conditions set out for the probationary period;
- severely violates the employer's internal rules and policies;
- is corrupt or neglectful in performing his or her duties, causing severe damage to the employer's interests;
- fraudulently induced the employer to employ him or her through means such as fraud, deception or coercion;

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- is simultaneously employed by another employer, severely affecting the performance of his or her duties, or he or she refuses to rectify the situation after receiving the employer's request; or
- is convicted of a crime.

Severance pay

41 | Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

According to the Labour Contract Law, an employer must make a severance payment upon termination of employment if:

- the employee terminates the labour contract owing to the employer's fault (eg, not paying the employee in full or in a timely manner);
- the employer does not renew the employee's fixed-term labour contract;
- the employer initiates the termination discussion, and the employer and employee reach a mutual agreement to terminate the labour contract;
- the employer terminates an employment contract with 30 days of notice or payment of one month's salary in lieu of notice;
- the employer carries out collective dismissals or a mass lay-off owing to the need to restructure the enterprise under the applicable laws and regulations;
- a fixed-term labour contract expires and the employee has refused to renew the employment contract on the lesser terms proposed by the employer (severance pay is not due if the employer proposes to renew the labour contract on the same or more favourable terms);
- the employer is declared bankrupt under the law, has its business licence revoked, is subject to a lawful order to shut down, is closed down or decides to go into liquidation; or
- any other circumstances prescribed by law and administrative regulations.

The aggregate amount of severance payment is calculated primarily based on the employee's monthly salary for each completed year of service with the employer. A period longer than six months but shorter than one year will be rounded up to a full year of service and a period shorter than six months gives rise to an entitlement to half a month's salary.

In calculating the severance payment, the monthly salary used is the employee's average monthly salary in the 12-month period immediately preceding the termination. If the monthly salary of an employee is higher than three times the average monthly salary for the relevant year as announced by the government at the municipal level directly under the central government or at the district level where the employer is situated, the monthly salary used to calculate the severance payment may be capped at three times the average monthly salary announced by the government. In such a scenario, the number of service years for calculating the severance payment amount due to the employee concerned may also be capped at 12 years. However, if an employee's service commenced before 1 January 2008 (the date of effect of the Labour Contract Law), the calculation may vary significantly depending on the reason for the termination, the work location of the employee, the location where the employer is registered (if different from the work location of the employee) and the circumstances involved.

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Procedure

42 | Are there any procedural requirements for dismissing an employee?

The Labour Contract Law prescribes certain procedures for dismissing employees. If an employer plans to terminate a labour contract unilaterally, it must provide prior notice to the trade union, even if the employer does not have its own trade union. In this case, the local or municipal union may be notified. If the employer violates any laws, regulations or labour contracts, the union may ask the employer to take corrective measures. The employer must consider the union's opinions and notify the union in writing of the outcome. Usually, no prior government approval is required to terminate an employee's contract, but such approval will be necessary in the event of a mass lay-off.

Employee protections

43 | In what circumstances are employees protected from dismissal?

Certain employees are protected from dismissal with prior notice and collective dismissal (but not summary dismissal) of their employment contracts, including:

- employees engaged in positions at risk of occupational diseases who have not undergone proper health examinations before leaving the position, or employees who are suspected of having occupational diseases, are being diagnosed for such diseases or are under medical observation;
- employees who have lost or partially lost the ability to work owing to a work-related injury or disease (including covid-19);
- employees within the statutory period for medical treatment owing to non-work-related medical conditions;
- employees who are pregnant, on maternity leave or in the nursing period, which is the period from childbirth until the child's first birthday;
- employees who have worked for 15 consecutive years with the same employer and are within five years of the statutory retirement age; and
- employees otherwise protected by the relevant laws and administrative regulations.

Mass terminations and collective dismissals

44 | Are there special rules for mass terminations or collective dismissals?

If an employer intends to dismiss 20 or more employees, or fewer than 20 employees when this number represents 10 per cent or more of the total number of its employees, the dismissals must be based on statutory reasons, including restructuring according to the Enterprise Bankruptcy Law, or serious difficulties in production or business operations. Also, the employer must consult with the employees by giving 30 days of advance notice of the background and reasons for the dismissals to the trade union or all of its employees. The employer should consider the opinions of the union or the employees and file the mass lay-off plan with the labour administrative authorities. While government approval is not legally required to implement a mass lay-off, such approval is necessary in practice.

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Class and collective actions

45 | Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

In theory, class actions are allowed in China. According to the Civil Procedure Law, where the subject matter of an action is of the same category and one of the parties has numerous litigants but the exact number of the litigants is uncertain when the lawsuit is filed, the people's court may issue a public notice to explain the nature of the case and the claims, as well as to notify interested persons who are also entitled to claims to register their claims with the people's court within a specified period. In practice, however, no such class actions have been brought; in most cases, an employee will file a claim on an individual basis.

While multiple employees may bring the same claim and the hearings may be held concurrently, the adjudications are made on an individual basis. When there is a breach of a collective bargaining agreement, as authorised by the Labour Contract Law, a trade union may apply for arbitration or bring a lawsuit against the employer. However, labour disputes filed in the name of the trade union are not common.

Mandatory retirement age

46 | Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

According to the Interim Measures on Retirement and Resignation of Workers and the Interim Measures on the Placement of Elderly, Weak, Sick and Disabled Employees, the mandatory retirement age is generally 60 for male workers, 55 for female workers who hold desk jobs or positions not requiring manual labour and 50 for other female workers.

When this law was promulgated several decades ago, it applied only to employees of state-owned enterprises; however, it now also applies to other businesses, including private and foreign-owned businesses. Employees who work underground, at high altitudes or in extreme temperatures, or whose work is especially physically taxing or otherwise harmful to their health, are entitled to early retirement (at 55 for male workers and at 45 for female workers).

Employers, however, are allowed to hire retirees using a labour service contract. Retired employees hired under labour service contracts are not entitled to termination protections and some other benefits provided under the Labour Contract Law, and their engagement in this manner may be limited to one to two years. Generally, foreign nationals are not permitted to work in China beyond the legal retirement age unless they have permanent residency in China.

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DISPUTE RESOLUTION

Arbitration

47 | May the parties agree to private arbitration of employment disputes?

No. The Labour Dispute Mediation and Arbitration Law specifically mandates arbitration at government-controlled labour arbitration committees if there is any dispute between the employer and employee for most causes of action. However, this statute encourages the parties to resolve their disputes by way of friendly negotiation or mediation, and government-supported and private mediation is also encouraged as a way to resolve disputes.

If a party disagrees with the arbitration award granted by the labour arbitration committees, such a party may challenge the award within a certain period by filing a lawsuit with the competent people's court, although some arbitration awards may not be challenged by the employer depending on the amount of subject matter at issue.

Employee waiver of rights

48 | May an employee agree to waive statutory and contractual rights to potential employment claims?

As a general principle, Chinese employment laws do not provide for an employee's waiver of statutory employment rights. In practice, however, when agreeing to a mutual termination of the employment relationship, an employee may agree to waive certain claims by signing an agreement with the employer, and such a waiver may be supported by the labour arbitration committee and court. Contractual employment claims, however, may generally be waived if they do not conflict with Chinese labour laws.

Limitation period

49 | What are the limitation periods for bringing employment claims?

Any arbitration claim must be made within one year of the day when 'the employee knows or should have known of the infringement of rights' according to the Labour Dispute Mediation and Arbitration Law. With respect to disputes over salary payments with current employees, the one-year limitation period starts on the date of termination of the labour contract.

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UPDATE AND TRENDS

Key developments and emerging trends

50 | Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

Developments in data protection legislation and the overall regime continue to tighten and inform whether and how employers can collect, retain, process and transfer personal data, particularly if the data will be transferred out of China.

Following the Cybersecurity Law (CSL) and the Personal Information Protection Law, the Measures for Security Assessment for Cross-Border Data Transfers (the Measures), which were published on 7 July 2022 and came into effect on 1 September 2022, expanded the scope of governmental security assessments that are required for the cross-border transfer of personal or important data. The CSL originally imposed government security assessment requirements only on critical infrastructure information operators. The Measures extend that obligation to include important data handlers and handlers of personal information that process personal information reaching certain thresholds. The Measures also define the concept of 'important data', which was unclear under the CSL, and specify the procedures for government security assessments as required by the CSL. Accordingly, employers must first conduct a self-assessment on whether they are subject to a governmental security assessment for cross-border data transfers according to the Measures. Notably, individual employee consent alone is not adequate.

As sexual harassment claims become more frequently reported, on 1 January 2023, the amendments to the Law on the Protection of Women's Rights and Interests (the Women's Protection Law) came into force. The Women's Protection Law emphasises the importance of equality between men and women in the workplace, and significantly enhances the protection of women's rights, including by adding additional obligations on employers to:

- prevent and investigate sexual harassment in the workplace (article 25);
- arrange for regular medical screenings for medical conditions that are specific to female employees (article 31); and
- provide special protection clauses for female employees in the employment contract or service agreement (article 44).

Importantly, the Women's Protection Law also makes clear the penalties and liability applicable for the violation of specific discrimination and sexual harassment provisions.

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