

CHINESE EMPLOYMENT LAWS AND REGULATIONS



PTL GROUP

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Since the year 2000, PTL Group has provided managerial and operational support for international companies throughout their market entry and various growth stages in China. Our teams of local experts help overseas companies to establish an effective and well-controlled entity in China.

PTL Group provides comprehensive HR management services throughout the entire employee lifecycle process, helping you manage your employees whilst providing all necessary payroll and administrative services.

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General Tips

- Signing an agreement with an **end date** allows you to terminate the employment by not renewing the agreement, without complicated termination procedures. However, you do still need to pay compensation fees.
- Do not terminate employment of an employee without consulting with an HR expert. Not following Chinese labor law regulations could cost you a lot of time, money and stress.
Keep Records of every HR related issue and communication that can support your case. Try to get everything in writing. If you have an oral discussion with an employee, summarize it and send it to him/her by email. It would be preferable if he/she signed it.
- **Record leave days, sick leave, and time of arrival and departure to and from work for each employee.** You will need all of this evidence if you decide to terminate the employment of a specific employee. Also, unused leave days equal a lot of money in the dismissal process. If you do not record this properly, you may need to pay a much higher amount upon dismissal
- **Don't employ people illegally.** If you operate illegally in China, your employees may feel uncomfortable working. If you begin operating illegally in China, the risk of being caught lies mainly with your employees. You're put your brand's future activity in China in potential jeopardy.



Probation Period

- If the term of a labor contract is between 3 months and 1 year, the probation period shall not exceed one month. If the term of a labor contract between 1 and 3 years, then the probation period shall not exceed 2 months. For a labor contract with a fixed term of 3+ years or without a fixed term, the probation term shall not exceed 6 months.
- An employer can only impose one probation period on an employee.
- For a labor contract that sets the completion of a specific task as the term to end the contract or with a fixed term of less than 3 months, no probation period may be stipulated.
- The wage of an employee during the probation period shall not be lower than the minimum wage for the same position of the same employer or lower than 80% of the wage stipulated in the labor contract, nor may it be lower than the minimum wage of the locality where the employer is located.
- During the probation period, except for very specific circumstances, the employer shall not dissolve the labor contract. If an employer dissolves a labor contract during the probation period, it must have a valid explanation.

Termination by Mutual Agreement



- The Employer and the Employee may mutually agree to terminate a contract.
- They will enter into a **Settlement Agreement** to agree on the terms and conditions of the termination.
- The notice period and the amount of compensation are to be negotiated between the parties.



Termination by the Employer

1. With immediate effect (no notice) and no severance payment:

- During the probation period, the Employee does not meet the set conditions required for employment;
- The Employee materially breaches the Employer's rules and regulations;
- The Employee causes **substantial damage** to the Employer by neglecting their duties or exploiting their position for personal gains;
- The Employee has simultaneously established an employment relationship with other employers (dual employment) which materially affects the completion of its tasks and refuses to rectify the matter;
- The Employee used means of **deception or coercion**, or has taken advantage of the Employer's difficulties to force him to conclude an invalid employment contract or to make an amendment to such contract;
- The Employee has **criminal liability** pursued in accordance with the Law.



The Employer shall justify the reasons to the Employee for the termination.

2. Termination of the employment contract by the Employer:

With 30 days prior notice or one-month salary in lieu of notice (and severance payment)

- The Employee is **incompetent** and remains incompetent after training or adjustment of his/her position;
- A **major change in the objective circumstances** relied on at the time the employment contract was entered into, rendering it non-performable and, after consultations, the Employer and the Employee are unable to reach agreement on amending the employment contract;
- The Employee has contracted an **illness** or sustained a **non-work-related injury** and after the expiration of the legally required sick leave, the Employee is unable to return to their original job or engage in other work arranged by the Employer.

3. Employer may not terminate employment contract, if:

- The Employee has been exposed to occupational hazards and has not undergone a medical check-up;
- The Employee is on **work-injury leave**;
- The Employee is still in the legally required **sick leave period**;
- The Employee is a female employee who is **pregnant**, during her maternity leave or nursing period;
- The Employee has been working for the same Employer for 15 years and is less than 5 years from retirement (Men: 60 years and Women: 50 or 55 years);
- Any other laws or regulations do not permit the Employer to terminate the Employees employment contract.



Termination by the Employee

1. Probation period:

- The Employee must give **3 days' notice** prior to terminating his contract.

2. An Employee may terminate his employment contract:

Giving 30 days prior notice and Severance payment is due

- The Employer **fails to provide labor protection** or work conditions in accordance with the employment contract;
- The Employer **fails to pay the full salary on time**;
- The Employer **fails to pay social security premiums** for the Employee in accordance with the law;
- The Employer's rules **violate laws or regulations** and harm the Employee's rights and interests;
- The Employee's employment **contract is rendered invalid** due to circumstances in the law, i.e. the Employer has used deception or coercion, or has taken advantage of the Employee's difficulties, to force the Employee to end an employment contract, or to make an amendment;
- Any other reasons specified in other laws and regulations.



3. Employee can immediately dissolve the labor contract without notifying the Employer for the following reasons:

- The Employer has forced the Employee to work through violence, threats or illegally restricting their personal freedom;
- The Employer illegally commands or forces an Employee to perform dangerous operations which may endanger their personal safety.

Severance Payment

1. Severance payment is due

- When the Employer and the Employee have **mutually agreed** to terminate the employment contract.
- When the **Employee terminates** its employment contract in accordance with Part 2 of the Termination by Employee Section above.
- When the **Employer terminates** the employment contract for the reasons listed in Part 2 of the Termination by the Employer Section.
- The Employer terminates the employment contract due to its **restructuring, or is declared bankrupt**, in accordance with the Enterprise Bankruptcy Law.
- The term of an **employment contract expires**.
- Upon the **expiry of the fixed-term contract**, the Employer (i) does not renew the contract or (ii) renews the contract but does not offer the same or better conditions.
- The Employer terminates the employment contract due to the **revocation of the Employer's business license** or the liquidation or dissolution of the Employer (the company goes out of business).
- Any other circumstances specified by laws and administrative regulations.

Calculation of Severance Pay



- Based on the Employee's years of service with the Employer.
- General Rule: One-month salary for each full year worked.
- Monthly Salary is defined by the average salary during the 12 months prior to the termination of contract
- Exceptions:
 - ❑ Less than 6 Months of work: ½ Month's Salary
 - ❑ Between 6-12 Months of Work: 1 Month's Salary
 - ❑ Maximum: Cannot exceed 3 times the local average monthly salary, and maximum period of service counted is 12 years.
 - ❑ For any period of Service before 2008: one month's salary for each year of service without any cap

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