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China's New Labor Law

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A. Legal Framework

Legal Framework: What Sources of Law Govern Employment Relations?

PRC Labor Law, PRC Labor Contract Law

**National Administrative Regulations
(e.g., Regulations on Enterprise Employment Dispute Settlement)**

**Provincial/Municipal Regulations
(e.g., Shanghai Labor Contract Regulations)**

**Administrative Rules Adopted by Relevant Ministry
(e.g., Administrative Rules on Employment of Foreigners)**

B. The Employment Contract

- Concept of “employment at will” does not exist; must enter into written contract within one month of hire

if there is no written contract signed within 1 month from the commencement of the employment, the employee is entitled to double wages each month; if no written contract is signed between the employer and the employee within 1 year of commencement of the employment, an open-term contract is deemed to have been signed.

- Supplementary contracts + employee handbook (code of ethics)
- Balance inclined to protection of employees in terms of interpretation of contract

C. Probation Period

- Under the Labor Law, a probation period can be as long as 6 months depending on the length of the contract term. The Labor Contract Law imposes a new national standard for the permissible length of probation periods as follows:

• Employment Contract Period	Maximum Probation Period
• 3 months to 1 year	1 month
• 1 year to less than 3 years	2 months
• More than 3 years or open-term contract	6 months

D. Termination of Employment

1. Expiry of specified term of employment
2. Resignation by employee
 - 2.1 Generally 30-day advance written notice
 - 2.2 During probationary period 3-day advance notice
 - 2.3 Immediate resignation for wrongful actions of employer, e.g. failure to pay social insurance or to provide safe working condition, **severance required**
3. Dismissal agreed to by employee (i.e., settled dismissal)
 - 3.1 **Severance required**

D. Termination of Employment

4. Dismissal for cause (cont'd)

4.1 Immediate dismissal (no written notice is required)

- a) Underperformance during probation period
- b) Severe violation of corporate policy
- c) Dereliction of duty or misconduct for personal gain, which causes significant loss to the employer
- d) Employment with a second employer, which has significant influence on performance, and failure to correct after employer's warning
- e) Invalid contract
- f) Criminal offense

D. Termination of Employment

- 4.2 30-day dismissal or immediate dismissal with 30-day salary (written notice is required)
- a) Disease or injury, and fails to recover within statutory medical treatment period
 - b) Underperformance even after additional training and adjustment of position
 - c) Material change of objective circumstances and failure to amend contract
 - d) **Severance required**

D. Termination of Employment

4.3 Large-scale Layoff (20 employees or 1/10th of all employees)

- a) 30-day advance consultation with trade union or representatives
- b) Report to local labor authority
- c) **Severance required**
- d) Limited to:
 - Reorganization under Bankruptcy Law
 - Serious difficulty in business operation
 - Change of business line, technical improvement or change of business model
 - Failure to perform contract due to other changes of objective circumstances

E. Compensation and Welfare

1. Minimum wages

1.1 Issued annually by local government

1.2 Varies among locales

1.3 Current minimum wages in Beijing:

	Hourly Rate	Monthly Rate
2006.7.1- 2007.6.30	RMB 3.82 (USD 0.51)	RMB 640 (USD 85.33)
2007.7.1- 2008.6.30	RMB 4.36 (USD 0.51)	RMB 730 (USD 85.33)

2. Salary payment

2.1 Monthly salary

2.2 Paid in cash, not in kind

E. Compensation and Welfare

3. Statutory salary deductions and employer contribution
 - 3.1 Only applicable to PRC employees
 - 3.2 Change annually
 - 3.3 Varies among locales
 - 3.4 Part of the deductions/employer contribution will be assigned to the employee's individual accounts, and the other to be distributed within the social welfare system in accordance with law

E. Compensation and Welfare

Employee Welfare/Deductions (Beijing) July 1, 2007 – June 30, 2008

		Housing Fund	Pension Fund	Health Insurance	Unemployment Insurance	Work-Related Injury Insurance	Maternity Insurance
Percentage of Salary	Employee	10%	8%	2%	0.5%	0	0%
	Employer	10%	20%	9%	1.5%	1.2%	0.8%
Cap of Calculation Basis (RMB)		9204	9024	9024	9024	9024	9024
Cap of Employer Payment (RMB)		920	1841	812	135	108	72

Total Employer Contribution: 42.5% of salary, capped at RMB3835 (USD512)

E. Compensation and Welfare

4. Severance

4.1 Applicable Circumstances:

- a) Wrongful action of employer
- b) Settled dismissal
- c) Dismissal for cause (ii) (iii)
- d) Large-scale
- e) Expiry of contract and employer does not offer to renew
- f) Bankruptcy, close-down, dissolution of employer

E. Compensation and Welfare

4.2 Calculation:

- a) Half-month salary for service of each full or partial half-year
- b) Capped at 12-month salary
- c) Highly salaried employees: Monthly salary for calculation purpose capped at 3 times provincial average salary, i.e. RMB9024 in Beijing

F. Employment-Related Supplementary Agreements and Documents

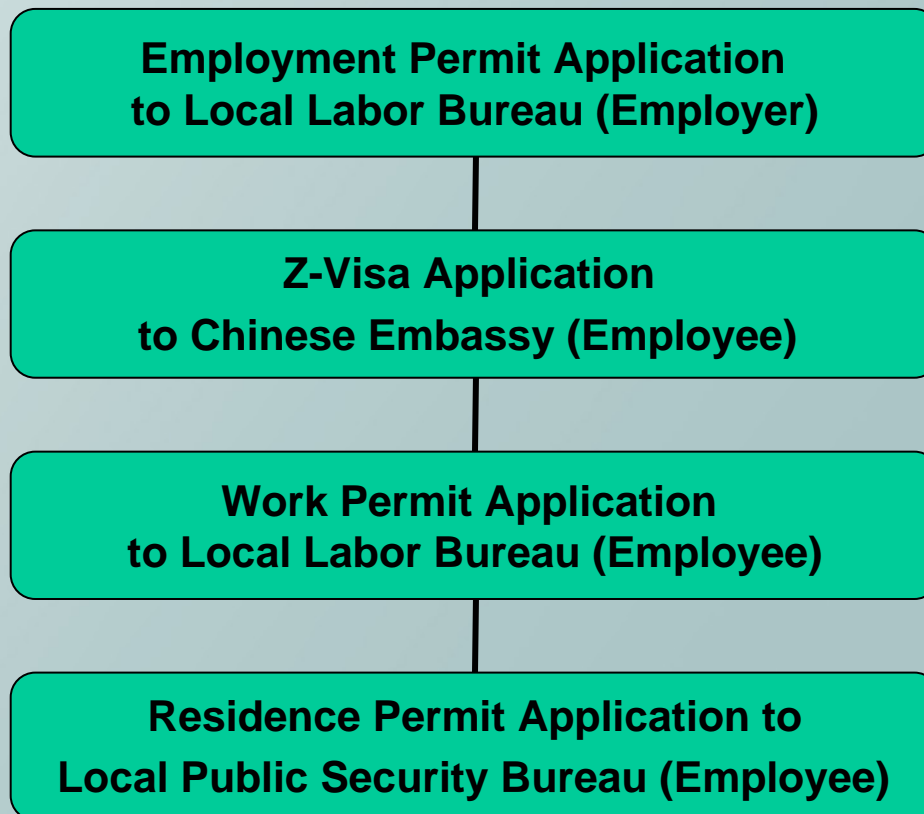
1. Statute/regulations specify what provisions must be in an employment agreement, but other provisions are also permissible:
 - 1.1 Confidentiality
 - 1.2 Nondisparagement
 - 1.3 Nonsolicitation
 - 1.4 Noncompetition
 - a) Compensation: No limitation of numbers, but there must be compensation
 - b) Monthly compensation
 - c) Obligatory period: two years maximum
 - d) Geographic scope
 - e) Liquidated damages: No limitation on amount

F. Employment-Related Supplementary Agreements and Documents

2. Training Agreement – Reimbursement of costs in event of resignation
3. Employment handbook, code of ethics
 - 1.1 Consultation with all employees
 - 1.2 Public announcement or inform employees
 - 1.3 Provide basis for termination of employment

G. Expatriates

Visa / work permit



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