

GET SERIOUS WITH WRITTEN EMPLOYMENT CONTRACTS IN CHINA

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By: Yujing Shu

For foreign investors, in addition to commercial opportunities, market entrance and policy environment, a significant aspect that drives their business success in China is human resources. Local employees of foreign-invested enterprises are often delegated to run and execute the day to day business, however, their relationship with the investors can sometimes result in a prolonged dispute, typically arising from the lack of a written employment contract.

Many western investors are used to issuing one-way offer letters to employees and believe they are more than enough to establish an employment relationship. However, China law mandates written employment contracts with all employees, a lack of which can result in employers being penalised.

Pursuant to Chinese Employment Contract Law (**CECL**), an employment contract should contain those terms that are commonly seen in western jurisdictions, for instance:

- (i) basic information of the employer and the employee, including name, address and identity/registration number
- (ii) term of contract
- (iii) scope, title and place of work
- (iv) working hours and leave provisions
- (v) remuneration and social insurance
- (vi) labor protection and conditions and protection against occupational hazards.

CECL also imposes an obligation on employers to enter into employment contracts with their employees, including Chinese nationals and expats, within the first month from the starting date of employment. If an employer fails to execute a valid employment contract with an employee within a month, the employer will be required to pay that employee double the employee's monthly salary. Where an employer fails to enter into a written contract with an employee within one year or more of their commencement, an open-term employment contract will be established. In addition, the Chinese labor authority may also impose fines on the employer for having violated the rules on written contracts. In this case, since there is an 'employment at will' concept, the employer will not be able to terminate the employment contract without triggering severance pay.

The mandatory written contract also applies to renewal periods. In practice, most employers often sign a fixed-term employment contract with employees. Some of these employers may not execute a new contract when the previous employment contract expires, but instead assume it will be renewed automatically by the employee's

continuous service. In this situation, a contract that is not renewed may also trigger compensation obligations on the employer.

It should also be noted that some labor arbitration commissions and local courts may not recognise employment contracts drafted in a foreign language. To overcome this, it is common practice for employers to prepare bilingual employment contracts, with the foreign language and Chinese contracts having the same legal effect.

Further, in order to be enforceable, employee handbooks or codes of conduct should also be prepared and acknowledged in writing by the employees after consulting labor unions or employee representatives.

Given the complexities associated with ensuring foreign owned and operated companies comply with China's regulatory obligations, it is important to ensure from an employment perspective well-crafted employment contracts are drafted in advance of hiring employees.

KEY CONTACTS



YUJING SHU
PARTNER

BEIJING
+86.10.5817.6100
YUJING.SHU@KLGATES.COM

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