



Internal labour rules and social insurance

This guideline provides practical advice on how to regulate company labour relations with the help of an employee handbook. The employee handbook provides details on mandatory provisions of the labour contract. It is therefore necessary for employees and employers in everyday employment situations; as such, it can be an important source of information and evidence for potential labour disputes. This guideline covers all essential topics for a well-drafted employee handbook to ensure a good employer–employee relationship.

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1 Introduction to this guideline

From recruitment to contract termination, managing employment relationships in China is complex. There are many labour-related laws and regulations, such as the Labour Law, Labour Contract Law, Social Contributions Regulations, and Salary Payment Regulations, governing various aspects of employment relations in China and providing the legal basis for human resources (HR) management. However, most of these laws and regulations provide only principles on key employment issues, such as recruitment requirements, employee performance review, employee departure, and overtime. As such, it is highly recommended that employers elaborate further on issues in the employee handbook so that all parties have a clearer picture of their mutual rights and obligations.

Since January 2008, many new laws and judicial interpretations have been issued in relation to employment. These changes have led to increased costs for employers in China; it is now more difficult to terminate an employee contract, and an employer can dismiss an employee only for reasons indicated in the statutes; otherwise, the termination is deemed illegal. In the worst case scenario, an employer will be forced to continue the employment of an employee whom they do not want to keep or else pay twice the severance pay rate. As a result of the changes in the laws, the employee handbook has become more important as a complement to the labour contract.

To mitigate legal risks, it is important for the employer to formulate an employee handbook to clarify the labour rules as applied in their company. The fundamental parts of the handbook should include the following:

- Recruitment requirements applied in the company;
- Details of the performance assessment process;
 - Details of the statutory termination reasons.

This guideline provides an overview on how to write your employee handbook based on the current labour laws, regulations, and judicial interpretations. However, every employer is different, which should be borne in mind when drafting the handbook; furthermore, specialised industries may have additional requirements. This guideline covers the following topics:

- Introduction to the employee handbook and how to validate its rules;
- What chapters the handbook should contain and why they are necessary:
 - General behaviour;
 - Recruitment procedures;
 - Working hours and leave;
 - Remuneration;
 - Staff performance assessment;
 - Confidentiality and non-competition;
 - Termination;
- Labour unions.
- Social insurance system in China.

2 Introduction to the employee handbook

It is impossible for the labour contract to cover every significant issue in the employer–employee relationship. Additionally, most rules apply to all employees; as such, it is useful to summarise these universal internal rules in an employee handbook. Normally, a labour contract covers only the key items as required by the relevant Chinese labour-related laws. Thus, it is very important for the employee handbook to include details that can be linked to a specific article of the labour contract as an appendix to the contract. This will be deemed as proof for internal HR management as well as the basis for future legal termination.

Generally, the employee handbook shall include all issues mentioned in this guideline and additional company-specific factors. Thus, this would include regulations for the following:

- General behaviour, dress code, and conduct towards clients and company property;
- Workplace security;
- Business hours and overtime;
- Salary, bonuses, and social welfare payments;
- Paid annual leave and leave approval procedure;
- Confidentiality and non-competition (if applicable);
- Sick leave and other leave;
- Pension plan;
- Penalties, including right of termination;
- “At-will” statement signifying that the employee and employer agreed to the labour contract “at-will,” which prevents false declarations of an oral lifetime employment contract.

The employee handbook can play a significant role in termination and position changes. In the employee handbook, the code of conduct, a manual on how to behave, is defined, and it can therefore give the company a legal basis for termination, in cases where the staff member has not acted in accordance with the rules. For this reason, the employee handbook should be as precise as possible and written in an easily understandable manner.

3 Legal procedure on validating internal labour rules

According to the New Labour Contract Law enforced in 2008, an employer should discuss the internal labour rules with all employees when formulating, revising, or deciding on such rules or any significant matters that are in direct relation to the real benefits of employees. This includes remuneration, working time, leave, labour protection, social insurance and welfare, training, etc. Employees have the right to discuss with the employer the terms of such rules or significant matters, but the employer has the final decision on whether or not to accept the employees’ feedback.

In addition, the employer must publicise or inform the employees about the contents of the employee handbook and significant matters that are in direct relation to the real benefits; otherwise, such internal labour rules will not be effective. In other words, the employer cannot unilaterally use the rules to legally terminate a labour contract or adjust an employee’s position or salary. Hence, **it is important to make**

detailed written records of the time and place, and provide agendas when organising meetings for all employees to discuss the internal labour rules contained in the employee handbook. Furthermore, a confirmation letter acknowledging that the employer has gone through the statutory publication or notification procedures should be signed by the employee and filed by the HR department of the employer.

4 General behaviour

Rules covering the general behaviour of employees should be drafted according to the principles explained below.

4.1 Discipline

Regulations regarding discipline at work cannot be included in the labour contract but can be included in the employee handbook. The handbook should certainly include a paragraph forbidding any kind of harassment or discrimination. It should also cover a range of situational behaviour standards, which may vary from industry to industry.

Situations in which discipline rules may be useful are the workplace in general, meeting with clients and business partners (B2B), contact to guest and clients (B2C), and specific situations (e.g. complaints, business presents, dangerous situations, and safety standards to be maintained by the employee).

4.2 Company property

Company property must be handled with care and respect. Furthermore, company property is not for private use unless explicitly stated.

In the event that damages occur as a result of the improper use of company equipment, the employee can be required to reimburse the company. This also applies if the damages occur while using personal devices at work that normally should be switched off.

If the employee used the company equipment correctly and in accordance with the internal regulations for usage or borrowing, he or she cannot be forced to make any payment.

4.3 Disciplinary punishment

Disciplinary action may involve warning, demotion, or even dismissal. A precise explanation as to the form of punishment that will be used in a given situation is absolutely necessary.

Generally, the first violation results in a warning, which can be given orally or in written form depending on the seriousness of the action. An employee who fails to correct his behaviour and breaches the rules again is subject to a second warning or demotion. This decision depends on the company; in either case, the employee should have been made aware of possible consequences in advance. Here, **a confirmation letter stating the employee's awareness of disciplinary punishments and their usage is important evidence in case of disputes.**

5 Standards for recruitment procedures

The detailed recruitment procedure and standards should be elaborated in the employee handbook. First, it provides guidelines to both parties (employer and candidate/employee) about the recruitment procedure and requirements and, second, it may serve as the basis for additional labour-related procedures. For

instance, according to the New Labour Contract Law enforced in 2008, an employer has the right to terminate an employee contract without paying severance if, during the probation period, an employee has proven to be unqualified and has not fulfilled the recruitment standards. A definition of “unqualified” should be incorporated into the employee handbook. This depends on the position and business scope, and must to be defined on a case-to-case basis.

6 Working days and leave

Under Chinese labour-related laws and regulations, employees have both the right to work and to rest. This section will cover the following major points:

- Brief introduction on the working hour systems;
- Overtime calculation and internal approval procedures;
- Brief introduction on public holidays;
- Paid annual leave;
- Other leave:
 - Sick leave;
 - Work injury leave;
 - Maternity leave;
 - Marriage leave;
- Internal approval procedures for leave application.

6.1 Brief introduction on the working hour systems

Under current Chinese labour laws and regulations, there are three working hour systems:

- *Standard working hour system:* Under this system, an employee shall not work for more than eight hours per day and forty hours per week on average. Each employee should have at least one rest day per week. An employer may prolong the working time after negotiation with the labour union and employees if required due to the production or business needs. However, the prolonged time should not exceed one hour per day or three hours per day in special cases, and should not exceed thirty-six hours per month. These rules should be strictly followed. In addition, overtime should not affect the personal health of the employee. Furthermore, the relevant Chinese labour-related laws and regulations provide that an employer should not prolong the working time illegally, such is the case when there is no reason for working overtime and if the overtime has not been approved according to the Internal Approval Procedures in the employee handbook.
- *Comprehensive working hour system:* Working time under this system is calculated based on specific periods, such as per week, month, quarter, or year. However, the average daily and weekly working time in the set period should follow the rules of the standard working hour system; in other words, the average daily working time should not exceed eight hours and the average weekly working time should not exceed forty hours. This system is mainly applied to employees working in the industries of 1) transportation, railway, post and telecommunications, water transport, aviation, and fishing (which require continuous operation) and 2) geology and exploration, construction, salt and sugar

manufacturing, and tourism (which are subject to seasonal changes). Prior approval should be obtained from the local labour bureau in charge before adopting this working hour system.

- *Non-fixed working hour system*: This system does not need to follow the working time as calculated under the standard working hour system. It mainly applies to employees working as 1) senior management, sales persons, or others who cannot follow the standard working hour system due to the speciality of the employment or 2) drivers or loaders working in ports or warehouses. Again, prior approval should be obtained from the local labour bureau in charge before adopting this working hour system.

6.2 Overtime calculation and internal approval procedures

Under Chinese labour-related laws and regulations, an employee is entitled to overtime payments for work exceeding the statutory working hours. The overtime calculation varies under the different working hour systems.

Overtime calculation for the standard working hour system is as follows:

- Overtime on working days: 150% of basic hourly salary;
- Overtime on weekends: 200% of basic hourly salary;
- Overtime on public holidays: 300% of basic hourly salary.

Please note that an employer is entitled to offer compensatory time off for any overtime worked on weekends instead of paying overtime pay.

Overtime calculation for the comprehensive work hour system is as follows:

- Overtime other than the ordinary shift in the set period: 150% of basic hourly salary;
- Overtime on public holidays: 300% of basic hourly salary.

Please note that if the weekends are included in the set period, then the overtime calculation for weekends will be deemed the same as the overtime calculation on working days.

In conclusion, the formula for overtime payment calculation is as follows:

Compensation rate x hours worked overtime x basic hourly salary

An internal control policy on overtime application/confirmation and payment should be included in the employee handbook. Generally, an internal Overtime Application Form should be submitted for approval in advance and only approved overtime should be paid. The employee handbook should explain in detail how to use the Overtime Application Form.

6.3 Brief introduction on public holidays

In accordance with the Measures on National Holidays and Memorial Days (second revision) issued by the State Council in 2007 and enforced as of January 1st 2008, all citizens should benefit from the following eleven paid national holidays:

New Year's Day	One day on January 1st
Chinese Lunar New Year	Lunar New Year's Eve, plus the first and second day of the Lunar New Year
Tomb Sweeping Day	One day
Labour Day	One day on May 1st

Dragon Boat Day	One day
Mid-Autumn Festival	One day
National Holiday	October 1st, 2nd, and 3rd

Note: If the above national holidays fall on weekends, then compensatory paid time-off should be provided on working days.

Some citizens are entitled to the following holidays or memorial days:

Women's Day (March 8th)	All females have a half-day holiday
Youth Day (May 4)	All youths over 14 years have a half-day holiday
Children's Day (June 1)	All children under 14 years have a one-day holiday
Anniversary of the founding of the Chinese People's Liberation Army (August 1st)	Active duty military personnel have a half-day holiday

Note: If the above holidays happen to fall on weekends, then no compensatory paid time-off is provided.

6.4 Paid annual leave

In accordance with Chinese law (Regulation on Paid Annual Leaves for Employees promulgated by the State Council on December 14th 2007, effective from January 1st 2008, and the Implementation Rules on Paid Annual Leaves for Employees promulgated by the Ministry of Human Resources and Social Security on September 18th 2008, effective on the same day), an employee with a continuous working period of 12 months with previous and current employers is entitled to paid annual leave. However, the days of the paid annual leave are subject to the following restrictions:

- Five days for employees with less than 10 years of service in aggregation;
- 10 days for employees with between 10 and 20 years of service in aggregation;
- 15 days for employees with more than 20 years of service in aggregation.

A new employee, beginning in the middle of a calendar year, is entitled to annual leave only in proportion to the remaining calendar days.

However, an employee is not entitled to the abovementioned paid annual leave in the current year if the following conditions are met:

- They have already taken winter and summer holidays (normally applicable to teachers) as per the relevant Chinese laws and regulations; in addition, the vacations taken by the said employee have exceeded their paid annual leave;
- They have taken personal leave of more than 20 days in total, which was not deducted from the salary in accordance with the internal rules of the employer;
- They have taken sick leave for more than two months and worked for more than one year but no more than 10 years;
- They have taken sick leave for more than three months and worked for over 10 years but no more than 20 years;
- They have taken sick leave for more than four months and worked for more than 20 years.

In general, an employee must use all paid annual leave within the current year unless otherwise required by the employer due to the production or business needs. However, in this situation, the written consent of the employee should be obtained.

If the paid annual leave already taken by the employee is less than what is in accordance with the relevant Chinese laws and regulations, then the employer must pay 300% of the basic daily salary to the employee for the annual leave not taken.

If the employer arranges the employee to take annual leave, but the employee proposes in writing not to take annual leave for personal reasons, then the employer is responsible for paying only the basic salary for normal working time. Records of such agreements should be kept for the employer's protection.

When the labour contract is terminated, the employer should pay the employee for the annual leave not taken in the current year. The formula for calculating the amount of annual leave not taken is as below:

(Calendar days worked in the current year ÷ 365) × total annual leave entitlement for the current year — annual leave already taken by the employee

When the labour contract is terminated, if the employee has taken more paid annual leave than the entitlement for the current year, then the employer has not the right to deduct any salary incurred from this.

The statutory paid annual leave described above is the minimum set by the law. However, in practice, employers tend to provide more paid annual leave. Thus, it is very important to stipulate the following in the employee handbook: 1) an employee should take the statutory paid annual leave that cannot be forwarded to next year, which excludes the possibility of the said employee claiming the 300% payment in lieu of paid leave as mentioned above; 2) the additional paid annual leave provided by the employer can be forwarded to February 1st of the following year, but if the said employee cannot take the additional leave before the deadline, then it automatically forfeited by the employer.

6.5 Other leave

6.5.1 Sick leave

In accordance with the Rules on Medical Leave for Employees with Sickness or Non-Work-Related Injury issued by the previous Ministry of Labour and effective as of January 1st 1995, an employee can benefit from medical leave ranging from three to 24 months based on the total working period in aggregation as well as the working period with current employer. For employees suffering from serious diseases – such as cancer, psychosis, or paralysis – if they cannot be cured within 24 months, then upon approval from the local labour authority in charge, the medical leave may be prolonged. The labour contract cannot be terminated during medical leave, and if the labour contract expires before the termination of medical leave, then the labour contract will be automatically extended to the expiry date of the medical leave. The length of statutory medical leave is provided as below:

- Minimum: 3 months;
- Less than 10 years' work experience in total, more than five years with the current employer: six months;
- More than 10 years' work experience in total, less than five years with the current employer: six months;
- More than 10 years' work experience and:
 - Between five and 10 years with the current employer: nine months;
 - Between 10 and 15 years with the current employer: 12 months;

- Between 15 and 20 years with the current employer: 18 months;
- More than 20 years with the current employer: 24 months.

In accordance with the Comments of the Ministry of Labour on Several Issues for Implementing the Labour Law of the People's Republic of China issued by the previous Ministry of Labour and effective as of January 1st 1995, the salary paid during the medical leave can be paid below the local minimum wage, but not be less than 80% of it. In Beijing, the sick leave salary shall not be less than 80% of the local minimum wage (RMB1 260 in 2012 in Beijing). As such, we would like to suggest incorporating such a provision in the employee handbook: "The standard sick leave salary will follow the national laws and local regulations, but the employer has the final right to decide whether to apply it to the employee involved or not." We leave this to the full discretion of the employer since the amount of the sick leave salary also affects the calculation of severance payment in case of a future contract termination.

6.5.2 Work injury leave

In accordance with the Regulation on Work Injury Insurance (revised 2013) as promulgated by the State Council and effective as of January 1st 2013, work-related injuries are identified if the concerned employee has any of the following:

- The employee is injured when doing work within working time and inside the workplace;
- The employee is injured by accident due to the preparatory or tail-in work relevant to the job before or after working hours and inside the workplace;
- The employee is injured due to violence and other accidents arising from their performance of duties within working hours and inside the workplace;
- The employee suffers from occupational diseases;
- The employee suffers from injuries due to work or is absent due to accidents occurring during a business trip;
- The employee is injured by a motor vehicle on their way to or from work;
- Other circumstances should be deemed as work-related injuries under the laws or regulations.

Furthermore, the following situations will be regarded as work-relating injury:

- The employee dies suddenly due to illness or dies within 48 hours of emergency rescue during the working time and inside the workplace;
- The employee is injured when protecting national or public interests through rescue and relief work.

In addition, the following are not identified or regarded as work-related injuries:

- The employee dies due to criminal activities or breaching security administration rules;
- The employee dies due to alcoholism;
- The employee commits suicide or self-harm.

In general, an employer cannot terminate the labour contract in advance for an employee who has suffered a work-related injury that has been accepted by the relevant authority.

6.5.3 Maternity leave

In accordance with the Special Rules on the Labour Protection of Female Employees issued by the State Council on April 18th 2012 and effective on the same day, a female employee giving birth to her first child is entitled to paid maternity leave of 98 days. In the case of complicated or multiple births, this period can be prolonged by an additional 15 days for each additional child. During maternity leave, the mother is paid her salary from the maternity insurance fund. If the employer has never contributed to the maternity insurance fund for the mother, the employer is still responsible for paying the mother her salary during her maternity leave. This payment from the maternity insurance fund is called a “maternity allowance” and is calculated as follows:

Average monthly salary of all employees of the employer during the previous calendar year ÷ 30 (days) × duration of maternity leave

6.5.4 Marriage leave

There are no clear national laws governing marriage leave. However, generally one to three days off are given at full pay to an employee for the marriage. Further, there are numerous local regulations to address this issue. Under the Population and Family Planning Regulation of Beijing, an additional seven days of marriage leave at full pay is offered in cases of late marriage, meaning that the bride is at least 23 years or the groom at least 25 years old.

It is suggested that the employee handbook include a statement such as “a copy of the marriage certificate should be provided when requesting marriage leave, and the marriage leave must be taken over a continuous period.”

6.6 Internal approval procedures for leave applications

It is always recommended to record the exact leave approval procedure in the employee handbook for HR management purposes in addition to the rules for future termination. In the following paragraphs, we summarise the key points to be included in the employee handbook in terms of internal approval procedures for leave.

Firstly, for all types of leave, the employee must ask for approval in writing in advance. In the case of an emergency, the employee has the right to inform the employer by telephone and then ask for leave in the correct manner immediately upon returning to the workplace. Whenever an employee intends to take leave, he or she is obliged to organise their work in advance.

For annual leave, the employee should apply in advance according to the internal regulations of the employer. For example, if the employee wants to take two days’ annual leave, then the application should be submitted at least one day in advance. For up to five days’ leave, the application should be submitted at least three days in advance. For more than five days, a minimum of five days’ notice is required.

For sick leave, the employee should submit the relevant certificates issued by the hospital of medical insurance prescribed by the state, such as a leave permit issued by a doctor, medical certificate, or payment certificate from the hospital.

For other leave, the relevant certificates justifying the leave must be made available to the employer, such as a marriage certificate for marriage leave and pregnancy certificate for maternity leave.

7 Remuneration standards

Under current Chinese labour-related laws and regulations, the employer has the liability to pay the employee's salary or overtime payments for work performed as well as contribute to the statutory social insurance. From the employees' point of view, they want to be correctly paid for the work performed, bonus pay, and other kinds of benefits, and at the same time, they want to structure their salary package in a legal way to reduce their individual income tax burden.

7.1 Overview of salary, local minimum salary, social average salary, and bonuses

Under current Chinese labour-related laws and regulations or the agreed labour contract, "salary" may refer to labour remuneration paid to the employee in the form of money, which includes the hourly wage, piecework wage, bonus, allowance, and subsidies, as well as overtime payments, etc.

In accordance with the Provisions on Minimum Wages issued by the previous of Ministry of Labour on January 20th 2004, made effective on March 1st 2004, minimum wage refers to the lowest labour remuneration paid by the employer. The local government at the provincial level has the right to set local minimum wages within its administrative area. The employer should publicise the local minimum wages to all employees within 10 days of the local government's announcement on minimum wages.

At the end of each year, the Beijing Human Resources and Social Security Bureau issues the minimum wage for Beijing for the following year; for example, the minimum wage in 2013 is RMB 1,400 per month and RMB 8.05 per hour. However, minimum wages do not include the following, which should be paid in addition to wages:

- Overtime payments;
- Supplements paid to employees who work in special working environments or conditions, such as poisonous and harmful environments, underground, high or low temperatures, etc.;
- Social insurance and housing funds contributed by the employees.

Moreover, the hourly wage for non-full-time employees in Beijing in 2013 is RMB 15.20, and their hourly wage for public holidays is RMB 36.60. In this case, the standard hourly wage includes pension, medical, and unemployment insurance contributed by both the employer and employee.

The laws promulgated by the Chinese authorities on the central level remain silent on the issue of social average wages. However, every year in April, the local statistics bureau in cooperation with the human resources bureau issues the social average wages of the previous calendar year. For example, the monthly social average wage in Beijing in 2011 was RMB 4,672. This figure serves as the basis for calculating severance pay as well as adjusting annual pension insurance contributions.

As to bonuses, the employer has the full discretion on whether or not to pay a bonus. In practice, we suggest incorporating such a clause into the employee handbook to the effect that the employer has the right to decide on the attribution of bonuses based on the employer's business status and the employee's annual performance results.

8 Staff performance assessment procedures

Staff performance assessment is one of the most important functions in human resource management and therefore needs to be incorporated into the employee handbook. It sets the standards for evaluating the performance of the employee in terms of quantity and quality, management skills, etc., which will be used

as the basis for the employee's salary adjustment, promotion, or even legal termination. This section elaborates the procedures in the following key areas:

- Legal termination by an employer;
- Salary and position adjustment;
- Performance assessment standards;
- Signed performance assessment.

8.1 Legal termination by an employer

In accordance with the New Labour Contract Law enforced in 2008, an employer has the right to terminate the labour contract with 30 days' prior notice or, in lieu, the payment of one month's salary if an employee is incompetent and remains incompetent after training or changing his position. As such, before an employer can legally terminate the labour contract, an employer must prove that the said employee is incompetent and furthermore remains incompetent even after the employer offers training or adjusts the position. However, the relevant Chinese labour-related laws or regulations provide no information on the matter of proof. Therefore, details on the required proof should be incorporated into the employee handbook to provide specific evaluation criteria to assess whether or not the employee is competent for the position.

Furthermore, staff performance assessment standards should be made known to employees in advance, and knowledge of standards confirmed by the employees in writing. Normally, companies make the staff performance assessment standards as an appendix in the employee handbook. In this way, when the employees sign the approval, confirming their knowledge of the handbook's content, it can definitely be proven that they are aware of the staff performance assessment standards, which will prevent future disputes.

8.2 Salary and position adjustment

There are two ways to adjust the salary and position of an employee: One is through mutual agreement in writing; the other is to follow the statutory salary and position adjustment provision under the Chinese labour-related laws and regulations.

The New Labour Contract Law enforced in 2008 provides that both an employer and employee can amend the labour contract by mutual written agreement, and each should keep a written copy of the amended agreement. This is the safest solution for an employer to adjust the position and salary of an employee. In practice, an employer may state in the labour contract or employee handbook that the employer has the right to unilaterally adjust the position and salary of an employee based on the business status of the employer or similar expressions. Normally, an employee will be happy and there will be no dispute if the salary or position improves; however, an employee will probably object if his salary is decreased or position is downgraded under the unilateral adjustment rule. Furthermore, a demotion or salary decrease resulting from such a unilateral adjustment rule will or will not be supported by the local court, depending on whether the employer can prove the rationale behind the unilateral adjustment. In the example of a female salesperson who is pregnant and soon to give birth, her employer decides to transfer her to a reception position without a salary decrease in consideration of her safety. Such an adjustment is rational and will probably be supported by the local court.

An employer may make three statutory unilateral position adjustments under current Chinese laws and regulations if an employee is 1) incompetent; 2) suffering from an illness or non-work-related injury and

cannot continue in the same role following the end of the medical period; 3) in oral agreement with the adjusted position for over a month. Such adjustments do not violate any laws, regulations, policies, or social conventions. Similarly, what is deemed competent or incompetent for the specific position must be further explained in the employee handbook.

Salary adjustment is usually linked to position adjustment. The employee will always be happy with a salary increase but will resist a decrease. The current Chinese labour-related laws and regulations are silent as to whether an employer can definitely adjust the salary when adjusting an employee's position. As such, it is necessary to provide staff position evaluation and salary administration rules to inform the employee as to salary levels applicable to different positions. Staff position evaluation and salary administration rules should thus be included in the employee handbook to avoid future disputes. Again, administration rules should go through the statutory notification procedures for all employees before they can take effect. It is therefore better to include it in the employee handbook directly or attach it as an appendix.

8.3 Performance assessment standards

Performance assessment standards should be made specific, measurable, attainable, realistic, and time-bound (abbreviated as "SMART"), as proposed by international management professionals. This guide will not go further into this topic since it is closely related to the overall business model of each employer and the positions available in the business. It is important for an employer to design the SMART performance assessment standards to facilitate the legal basis of its unilateral adjustment decisions later on.

8.4 Signed performance assessment

As explained above, the staff performance assessment is very important for both unilateral legal termination and unilateral adjustment of salary or position by an employer. It is therefore important to ask said employee to recognise the performance assessment results by signing it for record and evidence purposes.

9 Confidentiality and non-competition

In accordance with the Chinese New Labour Contract Law promulgated by the national standing committee on June 29th 2007 and effective as of January 1st 2008, the employer can stipulate in the labour contract that the employee should maintain confidentiality on information such as commercial secrets and intellectual properties. Furthermore, the employer can state that employees with a confidential liability must abide by the non-competition liability. In this section, we will cover the following key points in this regard:

- Scope of confidential information;
- Employees subject to confidentiality;
- Consequences of breaching a confidentiality agreement;
- Brief introduction on non-competition terms.

9.1 Scope of confidential information

The Chinese labour-related laws and regulations are silent as to the information that should be deemed as confidential. In fact, it is rather impossible to provide a scope of confidentiality in laws or regulations, since businesses vary greatly from employer to employer. As such, it is recommended to specify the scope

of confidential information in the employee handbook in order to maintain security standards. Below is an example of the scope of confidential information terms as found in the internal labour rules:

The employee has the liability to ensure the confidentiality of the employer's commercial and trade secrets as well as intellectual property. The employee agrees and commits to keep the employer's confidential information strictly secret. Without the employer's prior written consent, the employee shall not disclose such information to any third party or use such information for purposes other than to fulfil the labour contract or internal labour rules. The employee understands and acknowledges that the confidential information of the employer refers to any information owned or controlled by the employer and/or its affiliated companies, which cannot be directly obtained by the employee through open channels. This information can bring further potential economic benefits or competitive advantage to the employer and/or its affiliates, including, but not limited to, any technical or business information owned and/or controlled by the employer and/or its affiliates, no matter how such information is reflected in its form or whether or not it is clearly marked as "confidential."

According to the Anti-Unfair Competition Law of the People's Republic of China promulgated by the national standing committee on September 2nd 1993 and effective as of December 1st 1993, trade secrets refer to technical and business information with the following characteristics:

- Unknown to the public;
- Capable of generating economic profit;
- Specific and immediately applicable;
- Subject to confidentiality measures.

9.2 Employees subject to confidentiality

The Chinese labour-related laws and regulations are silent in this regard. In practice, the employer will use confidentiality terms in all labour contracts; in other words, applicable to all employees. The employees who should absolutely sign such an agreement include senior managers, senior technicians, technical workers, market planners, and sales representatives responsible for decision-making processes, and accountants.

To short, a company should carefully think about which employees should be required to sign the confidentiality agreement.

9.3 Consequences of breaching a confidentiality agreement

The consequences of breaching a confidentiality agreement can be provided in the employee handbook. For example, an infringement of the agreement can result in financial restitution, which has to be paid to the party suffering economic loss due to this infringement. Or, in relation to the internal labour rules, such an infringement shall be deemed as a serious violation of the internal labour rules of the employer regardless of the loss incurred; as a result, the employer has the right to legally terminate the labour contract without any severance payment.

9.4 Brief introduction on non-competition terms

In accordance with the Chinese New Labour Contract Law promulgated by the national standing committee on June 29th 2007 and effective as of January 1st 2008, the employer can include a non-competition clause in the labour contract with the employee who is subject to a confidentiality agreement. The purpose is to limit the risk of spreading confidential information. It also provides that non-competition

applies only to employees in management, technical, or confidential positions. It further provides that the employer and employee can decide on the non-competition application area and the compensation amount. However, it clearly states that the maximum non-competition period shall not exceed two years after the termination date.

Since the enforcement of the Chinese New Labour Contract Law, there has been an on-going dispute with regard to the validity of the non-competition clause. However, this changed when the Supreme People's Court issued the Judicial Interpretation on Applicable Laws in relation to the Trial on Labour Disputes Cases ("Interpretation IV") on December 31st 2012, which entered into force on February 1st 2013. The main updates on the non-competition law are the following:

- Thirty percent of the average salary for the 12 months preceding the termination of the labour contract shall be paid to the employee who abides by the non-competition liability on a monthly basis as per the employee's request when the compensation amount is not stated under the non-competition clause.
- The employee has the right to terminate the non-competition clause if the employer fails to pay the non-competition compensation for three months; but there is no specification as to whether the payment is made over three consecutive months or in a single payment.
- The employer has the right to terminate the non-competition clause by paying an additional three months non-competition compensation to the employee, but only if the employee makes this request.
- The employer has the right to ask the employee to abide by the agreed non-competition liability, and the employee has the right to ask the employer to pay the agreed non-competition compensation.
- If the employee violates the agreed non-competition clause, the employee shall pay liquidation damages to the employer. Moreover, the employer has the right to ask the employee to continue to abide by the agreed non-competition liability.

10 Termination

Since the Chinese New Labour Contract Law was enforced in 2008, it is not easy for an employer to unilaterally terminate a labour contract in advance. In accordance with the Implementation Rules on Chinese New Labour Contract Law promulgated by the executive meeting of the State Council on September 3th 2008 and taking effect the same day, there are 14 legal reasons for which an employer can unilaterally terminate a labour contract; otherwise, it will be deemed an illegal termination. It is therefore very important to provide greater detail on these legal reasons in the employee handbook in order to use them in a broad way. In this section, we explain the following points:

- Brief introduction on contract termination;
- Termination upon mutual written agreement;
- Immediate termination by an employer;
- Termination after one month's notice by an employer;
- Situations prohibiting termination;
- Situations not requiring severance payments;
- Consequences of illegal termination;

- Severance payment calculation.

10.1 Brief introduction on contract termination

Under the Chinese labour-related laws and regulations, there are numerous termination situations that an employer may propose. Among them, termination upon mutual written agreement is the safest way for an employer.

In practice, employers often forget to notify their labour union of the reasons for unilateral termination, as required by the Chinese labour-related laws and regulations. If the case is brought to court, this will not be supported by the local court in charge.

10.2 Termination upon mutual written agreement

For an employer, this approach represents a convenient method of termination since it does not require government reporting. It is also the safest way for termination as it carries the employee's written agreement. However, in practice, the employee will ask for a large amount of severance pay, larger than the amount due according to the relevant laws and regulations.

10.3 Immediate termination by an employer

An employer can terminate a labour contract immediately if the concerned employee is involved in any of the following situations:

- Proven to be unqualified for the work during the probation period;
- Seriously violating the internal rules and regulations of the employer;
- Involved in corruption or dereliction of duty, causing a serious loss to the employer;
- Simultaneously engaged in another labour contract with another employer, which seriously affects completing work with the current employer, or refusing to correct such actions upon the request of the current employer;
- Concluding the labour contract by way of fraud, coercion, or exploitation;
- Under investigation for criminal liabilities.

In accordance with the above situations, it is necessary for the employer to stipulate the specific standards or thresholds for “qualifications during the probation period,” “serious violations of the internal rules,” “amount of the serious loss,” etc.

Further, as to the criminal liabilities mentioned above, the relevant regulations issued by the previous Ministry of Labour state that being investigated for criminal liabilities refers to situations such as 1) being exempted from prosecution by the people's procuratorate, which is a governmental department that has the legal right to bring criminal litigation to the people's court as the plaintiff; 2) being sentenced to punishment by the people's court; 3) being exempted from criminal punishment under certain situations.

10.4 Termination after one month's notice by an employer

In the case of a *termination by notice*, notice must be given 30 days in advance. An alternative is the payment of one month's additional salary. Termination by notice is only justified if 1) the employee is found to be incompetent for the position even after receiving training or transferring their position; 2) the employee is unable to perform his old or new designated position after the end of a medical period due to sickness or non-work-related injury; 3) the objective situations on which the labour contract was

concluded have undergone serious changes, resulting in the impossible fulfilment of the labour contract with no agreement being reached after mutual negotiation between the employer and employee.

10.5 Economic redundancy

“Economic redundancy” is defined as the dismissal of at least 20 employees or 10% of staff members. Termination to reduce overhead costs is not a statutory reason and is considered as unlawful dismissal. These redundancies must be reported and justified to the labour union. Additionally, the employee has to give the employees 30 days’ written notice and explain the circumstances leading to the decision. The statutory reasons for economic redundancy are as follows:

- Company is restructured in accordance with the bankruptcy law;
- Company undergoes severe difficulties in production;
- After the implementation of new technologies, the employee is no longer needed and no agreement could be reached with the employee for a new position;
- Company experiences serious changes in objective circumstances under which the employment contract was concluded.

Whenever economic redundancy is applicable, certain groups of employees are protected and cannot be dismissed. These groups are employees with longer-term fixed contracts, employees with an employment contract of indefinite duration, and the primary earners in families, especially with elderly people or children in their care.

10.6 Situations prohibiting termination

An employer cannot terminate a contract due to economic redundancy or with one month’s notice if the employee is in any of the following situations:

- Employee with an occupational disease who leaves without doing the occupational disease check-up or during a medical observation period;
- Employee suffering from a work-related injury or occupational disease, confirming the loss of all or part of their working capacity;
- Employee suffering from a sickness or non-work-related injury and still in the medical period;
- Female employee in the pregnancy, labour, or nursing period;
- Employee working for at least 15 years for the current employer and awaiting retirement in five years or less.

10.7 Situations requiring severance payments

Severance payment, formerly called “economic compensation,” has to be paid by the employer whenever the following circumstances apply:

- Mutual agreement proposed by the employer;
- Termination with one month’s notice due to statutory causes;
- Economic redundancy due to restructuring in accordance with the bankruptcy law;
- Employer filing for bankruptcy in accordance with the laws;

- Revoked business license, company ordered to close, or employer's liquidation ahead of the business operation term;
- Termination proposed by an employee due to the illegal activities of the employer.

10.8 Situations not requiring severance payments

Severance payment is not required to be paid if an employee meets any of the following situations:

- Proven to be unqualified for the work during the probation period;
- Seriously violating the internal rules and regulations of the employer;
- Involved in corruption or dereliction of duty causing serious loss to the employer;
- Simultaneously engaged in another labour contract with another employer, which seriously affects completing work with the current employer, or refusing to correct such actions upon the request of the current employer;
- Concluding the labour contract by way of fraud, coercion, or exploitation;
- Under investigation for criminal liabilities.

Furthermore, severance payment is not required for part-time employees.

10.9 Consequences of illegal termination

“Illegal termination” refers to a dismissal that cannot be justified by any of the statutory reasons.

In the case of an illegal termination, the employer can be forced by law to reinstate the employee or compensate them with twice the severance payment rate.

If termination is made in accordance with the law but the severance payment is not calculated correctly or paid in full, the employer may face penalties up to 100% of the actual severance payment.

10.10 Severance payment calculation

The calculation for severance payment is based on the average monthly gross salary of the previous 12 months as at the termination date of the employee. This also includes all bonus or extra payments that may have been made. However, the calculation base cannot be higher than three times the municipality's monthly salary. The severance payment is calculated as follows:

Monthly average salary × *years of service*

As to the years of service, if it is less than six months, it will be counted as a half-year. Anything above six months is rounded up to one year. Hence, half of a monthly average salary will be paid for half a year's service and one monthly average salary for one year of service.

This calculation took effect on January 1st 2008 in accordance with the Chinese New Labour Contract law. All working periods prior to this date must be calculated according to the former regulations, which may vary from region to region. Thus, it is recommended to verify the severance payment regulations prior to 2008.

11 Labour union

In accordance with the Trade Union Law of the People's Republic of China (revised 2001) promulgated by the national standing committee on October 27th 2001, employees can decide to set up a trade union at their own discretion.

The All-China Federation of Trade Unions (ACFTU) and various trade unions protect the employees' legal interests. In this section, we will explain the following key points:

- Brief introduction on the ACFTU;
- Formation of a labour union;
- Rights and responsibilities of a labour union;
- Labour union fees;
- Company obligations for setting up a labour union.

11.1 Brief introduction of the ACFTU and various labour unions

The ACFTU was established in 1925 and combines the following unions:

- All-China Federation of Railway Workers' Unions;
- National Committee of the Chinese Agricultural, Forestry, and Water;
- Conservancy Workers' Union;
- National Committee of the Chinese Aviation Workers' Union;
- National Committee of the Chinese Banking Workers' Union;
- National Committee of the Chinese Defence Industry, Postal, and Telecommunications Workers' Union;
- National Committee of the Chinese Educational, Scientific, Cultural, Medical, and Sports Workers' Union;
- National Committee of the Chinese Energy and Chemical Workers' Union;
- National Committee of the Chinese Financial, Commercial, Light Industry, Textile, and Tobacco Workers' Union;
- National Committee of the Chinese Machinery, Metallurgical, and Building Material Workers' Union;
- National Committee of the Chinese Seamen and Construction Workers' Union.

11.2 Formation of a labour union

In accordance with Trade Union Law of the People's Republic of China (revised 2001), employees can set up a labour union on voluntary basis. Furthermore, all workers in enterprises, institutions, or governmental bodies who rely on the wages as their main source of income have the right to take part in or organise labour unions regardless of their nationality, race, gender, occupation, religion, or education. No entity or individual can deny or restrict employees from forming a union.

The Trade Union Law of the People's Republic of China (revised 2001) further states that in the case where there are no more than 25 members, the basic level labour union can be set up independently by one

employer or jointly by the members from two employers. The local level general labour union can be set up at the county level or level above. The ACFTU shall be set up as the unified national labour union.

11.3 Rights and responsibilities of the labour union

In general, the core responsibilities of a labour union lie in the mediation of employer–employee relationships, the protection of both the employers and employees’ rights and responsibilities. The rights and responsibilities of a labour union are summarised below:

- A labour union has the right to ask the company to correct its actions in violation of domestic management rules;
- A labour union can, on behalf of employees, negotiate with the company to sign a collective labour contract;
- A labour union has the right to ask the company to reconsider a termination if it is of the view that such a termination violates the laws, regulations, or relevant labour contract;
- A labour union has the right to give a certain amount of support or help for an employee’s lawsuit in the case of labour dispute;
- A labour union has the right to ask the company to correct its wrongful actions; for example, deducting the employees’ salaries without legal reasons or prolonging their working times. It also has the right to ask the local government to treat this issue according to the relevant laws or regulations;
- A labour union must take part in investigations concerning an employee’s death due to a work-related injury or in other situations seriously affecting an employee’s health;
- In case of a strike, a labour union shall, on behalf of employees, negotiate with the company and assist it in restoring production and work order as soon as possible.

11.4 Labour union fees

The labour union fees derive from any of the following:

- Membership fees covering the costs of labour union membership;
- Contributions amounting to 2% of the employees’ total salary paid on a monthly basis by the enterprises, institutions, or governmental bodies who set up the labour union;
- Income donated by enterprises or institutions who have joined the labour union;
- Any government subsidy;
- Other income.

The labour union fees are used mainly for employees or labour union activities. In the case of any infringement on the labour union’s legal rights and interests, it has the right to ask the people’s government or relevant departments for help or bring the case before the people’s court.

In accordance with the Interpretation of the Supreme People’s Court on Issues Concerning the Application of the Trade Union Law of the People’s Republic of China in Civil Trials, a labour union has the right to ask the people’s court for an order to obtain the labour union fee if a company refuses to contribute it as required by the relevant laws and regulations.

Furthermore, if an employee's contract is terminated as a result of taking part in labour union activities, at the said employee's request, the people's court can decide to ask the employer to reappoint the employee and pay the salary for the termination period; or, at the said employee's request, the people's court can ask the employer to pay compensation to the employee amounting to twice their annual income.

11.5 Company obligations for setting up a labour union

In accordance with the Chinese New Labour Contract Law effective on January 1st 2008, an employer shall notify the labour union in the case of a unilateral termination. If such notice is not made, the unilateral termination cannot be supported by the people's court, as such a company should set up a labour union. Furthermore, since 2011, the Beijing local government has issued a notice requiring companies, including foreign invested companies in Beijing, to set up their own labour union and pay the labour union fees on monthly basis to the designated bank account.

If the foreign invested company is small with no more than 25 employees, it is not necessary to set up its own labour union, but it can instead apply to join a labour union of a higher level, and in practice, this is required in Beijing.

12 Recent labour legislation development in China

The Labour Law of the People's Republic of China enforced in 1994 ("Labour Law") sets only the basic standards for employment, such as the labour contract types, working hour system, social security issues, etc. However, within a year of its enforcement, more than 20 regulations were issued by the previous Ministry of Labour to implement the Labour Law. These regulations mainly cover the following areas:

- **Employment relationships:** Rules on the Treatment of Labour Disputes; Management Rules on Labour Issues of Foreign Invested Enterprises (no longer valid); Measures on Economic Compensation for Illegally Terminating a Labour Contract, etc.;
- **Employment standards:** Rules on Female Employees' Labour Protection; Approval Measures for Adopting Non-Fixed Working Hours and Comprehensive Working Hours; Rules on the Minimum Wages of an Enterprise, etc.;
- **Social security:** Rules on Medical Periods for Employees Suffering from Sickness or Non-Work-Related Injuries; Work Injury Rules; Unemployment Rules, etc.;
- There are also many regulations to oversee the implementation of Labour Law.

In addition, the local governments also provide various local rules for implementing the Labour Law.

However, with China's economic development, the Labour Law cannot apply to all of the new situations, including short-term employment, new employment forms, etc. The Chinese New Labour Contract Law enforced on January 1st 2008, largely solves the issues presented below, which could not be addressed in the previous labour legislation:

- It expands the scope of application of the Labour Law;
- It incorporates second employment and part-time employment;
- It stresses the necessity of a written labour contract;
- It incorporates the company staff manual;

- It authorises additional unilateral termination reasons for employees;
- It stresses the labour union's importance in a unilateral termination by the employer;
- It further regulates the legal termination reasons of an employer.

In general, the Chinese New Labour Contract Law is more favourable to employees, and it is not easy for an employer to terminate a contract. In other words, the employee costs for an employer have been significantly increased.

To clarify the ambiguity of the Chinese New Labour Contract Law, numerous regulations and judicial interpretations were promulgated and came into effect thereafter. We will list these regulations at the end of this guide.

With regards to the social security issue, the unified Social Insurance Law of the People's Republic of China and its Implementation Rules, enforced in 2012, stipulate the five parts of the social insurance contribution system. It further clarifies some of the standards from the previous separate insurance regulation. For example, for a death incurred due to a workplace injury, a lump sum is paid. This amount has been clearly specified as representing 20 times the disposable income of average urban residents, an amount calculated based on data from the previous calendar year, which is announced by the National Statistic Bureau. In addition, the pension insurance transfer system found in different Chinese cities is also under consideration to facilitate the free movement of labour.

As to the treatment of labour disputes, according to the Labour Dispute Mediation and Arbitration Law of the People's Republic of China promulgated by the National Standing Committee on December 29th 2007 and effective as of May 1st 2008, the limitation for arbitration for employees was prolonged from 60 days to one year. In addition, it provides for two kinds of labour disputes where the arbitration awards are considered as final awards. In other words, arbitration awards shall be binding as of the issuance date, with the two types of labour dispute being 1) disputes on remuneration, medical fees for workplace injuries, severance payment, or compensation payment; 2) disputes on working time, leave, or social insurance. The law also states that the labour disputes concerning remuneration, medical fees, severance payment, or compensation payment can be brought before the people's court in charge of payments prior to arbitration at the request of the concerned party.

In general, the new labour legislations from 2008 not only clarify the ambiguities of the previous labour legislation but also adapt them to the new economic environment.

13 Social insurance

13.1 Overview of the social security system in China

The social security system in China is a mandatory system for both citizens and expatriates working in China. It enhances the basic rights of people working in China, including pension, medical, unemployment, injury, and maternity rights. The Interim Measures for the Participation in Social Security Insurance of Foreigners Employed in China (No. 16), issued by the Ministry of Human Resources and Social Security of the People's Republic of China and effective from October 15th 2011, stipulates that employed or seconded foreigners in China are required to contribute to social security insurance.

German citizens employed in China may be exempt from contributing to unemployment insurance and pensions if they contribute to the mandatory insurances in Germany, according to Social Security Insurance Agreement between Germany and China, issued by General Office of Ministry of Human Resources and Social Security of the People's Republic of China and effective from March 22th 2002.

After registering with the social security system, foreigners can enjoy the benefits covered by the insurance. For example, with medical insurance, with most hospitals covered by medical insurance, foreign employees with a social security card need pay only the minimum 5% of in-patient treatment costs and 50% of outpatient treatment costs after the respective reimbursement thresholds of RMB 1, 300 and RMB 2, 000 per calendar year.

13.2 Types and calculation of social security

Under the Social Insurance Law of the People's Republic of China promulgated by the national standing committee on October 28th 2010, effective July 1st 2011, there are five statutory social securities: pension, medical, workplace injury, unemployment, and maternity insurance. Social security contributions include employer and employee contributions. The employer has the obligation to withhold the employee portion of social security contribution from the employees' monthly salary. However, the contribution base and rates for social insurance vary according to location.

In accordance with the Notice on Social Security Contribution Base and Amount for the Year of 2012, issued by Beijing Social Security Fund Management Centre on April 9th 2012, the social insurance contribution base is based on the employee's monthly average salary from the previous year, and the upper limit of the contribution base is capped at 300% of the monthly average salary of employees in Beijing in the previous year. The lowest limit for the contribution base of medical, workplace injury, and maternity insurance cannot be lower than 60% of the monthly average salary of employees in Beijing for the last calendar year, while that of pension and unemployment insurance cannot be lower than 40% of the monthly average salary. For example, the monthly average salary of employees in Beijing in 2012 was RMB 4,672, and the monthly average salary and social security contribution base is annually adjusted in April.

The following table illustrates Beijing's current social security contribution rates and base:

Social security insurance categories	Employer portion	Employee portion	Minimum base	Base cap in 2012
**Pension insurance	20%	8%	1,869.00	14,016.00
Medical insurance	10%	2% + 3	2,803.00	14,016.00
**Unemployment insurance	1.0%	0.2%	1,869.00	14,016.00
*Workplace injury insurance	0.5%, 1%, 2%	N/A	2,803.00	14,016.00
Maternity insurance	0.8%	N/A	2,803.00	14,016.00

Notes: *Workplace injury insurance: employer rate is determined by the industry. **Unemployment insurance and pension may be exempted if a German citizen has contributed to the mandatory insurances in Germany.

The following table illustrates Shanghai's current social security contribution rates and base:

Social security insurance categories	Employer portion	Employee portion	Minimum base	Base cap in 2012
**Pension insurance	22%	8%	2,815.00	14,076.00
Medical insurance	12%	2%	2,815.00	14,076.00
**Unemployment insurance	1.7%	1.0%	2,815.00	14,076.00
*Workplace injury insurance	0.5%	N/A	2,815.00	14,076.00
Maternity insurance	0.8%	N/A	2,815.00	14,076.00

We present the following three study cases to illustrate social security calculation:

Example A

Foreigner A works in Beijing in 2012 with a gross monthly salary of RMB 20,000. The employee's base and contribution is thus calculated as follows.

A's monthly salary exceeds Beijing's base cap of RMB 14,016, so the base is capped at RMB 14,016. The following table shows the monthly social security contributions for A in 2012:

Social insurance base	Employer pension contribution	Employer medical contribution	Employer unemployment contribution	Employer injury contribution	Employer maternity contribution	Subtotal for employer contributions	Employee pension contribution	Employee medical contribution	Employee unemployment contribution	Subtotal for employee contributions
14,016.00	2,803.20	1,401.60	140.16	70.08	112.13	4,527.17	1,121.28	283.32	28.03	1,432.63

Example B

Foreigner B works in Beijing in 2012 with a gross monthly salary of RMB 2,600. The employee's base and contribution is thus calculated as follows:

B's monthly salary is lower than the minimum base for medical, workplace injury, and maternity insurance, so the contributions are calculated based on RMB 2,803. The following table shows the monthly social security contributions for B in 2012:

Social insurance base	Employer pension contribution	Employer medical contribution	Employer unemployment contribution	Employer injury contribution	Employer maternity contribution	Subtotal for employer contributions	Employee pension contribution	Employee medical contribution	Employee unemployment contribution	Subtotal for employee contributions
2,600.00	520.00	280.30	26.00	14.02	22.42	862.74	208.00	59.06	5.20	272.26

Example C

Foreigner C works in Shanghai in 2013 with a gross monthly salary of RMB 20,000. The employee's base and contribution is thus calculated as follows:

C's monthly salary exceeds the Shanghai base cap of RMB 14,076, so the base is capped at RMB 14,076. The following table shows the monthly social security contributions for C in 2013:

Social insurance base	Employer pension contribution	Employer medical contribution	Employer unemployment contribution	Employer injury contribution	Employer maternity contribution	Subtotal for employer contributions	Employee pension contribution	Employee medical contribution	Employee unemployment contribution	Subtotal for employee contributions
14,076.00	3,096.72	1,689.12	239.29	70.38	112.61	5,208.12	1,126.08	281.52	140.76	1,548.36

13.3 Consequences of non-compliance to the social security regime

If the social security contributions are not paid in due course, the labour bureau in charge will levy the late payment with interest. In addition, the employees involved have the right to terminate their labour contracts and the employer must pay the severance payment accordingly.

14 Overview of the Individual Income Tax exemption benefits for foreign employees in China

Under relevant tax laws and regulations in China, the following benefits received by the foreign employees on a non-case or non-reimbursement basis may be exempted from individual income tax:

- Housing, meals, and laundry allowance;
- Reimbursement of relocation fees incurred from commencement or cessation of employment in China;
- Travel allowance;
- Home trip allowance;
- Language training and child education allowance.

The relevant tax laws and regulations are silent as to the appropriate proportion of the above benefits received on a monthly basis in relation to the total monthly gross salary. However, in Beijing, it is acceptable if the total above monthly benefits do not exceed more than 40% of the foreign employee's monthly gross salary. In addition, in Beijing, every new foreign employee must register his labour contract and passport information with the tax authority in charge of individual income supervision.



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