

BIPO TIMES

June 2023 Vol. 70

www.biposervice.com

Understanding Mainland China's Labour Laws and Employment Regulations

Overview

Labour law and employment regulations in Mainland China is a crucial framework that business leaders and HR professionals need to understand. In China, labour laws and regulations are complex and strictly enforced, making compliance a top priority. This system encompasses various aspects, including employment contracts, working hours, wages, social insurance, and employee benefits.

Compliance with these regulations is essential to avoid penalties, legal disputes, and reputational damage. It requires diligent record-keeping, regular audits, and up-to-date knowledge of the evolving legal landscape. Adhering to the Human Resources Compliance System ensures fair and lawful treatment of employees, safeguards the rights of both employers and workers, and promotes a positive work environment.

Read a summary on how businesses can mitigate risks and foster long-term success in Mainland China by implementing effective compliance measures.

Basic Country Facts



Capital
Beijing



Population
1,455,295,493



Currency
Chinese Yuan (CNY)



GDP per Capita
USD 12,814 (as of 2022)

Why Invest in China

China's exceptional standing in the global market and its ability to sustain investor trust stems from various strengths it has acquired. These strengths include the immense potential for market expansion, a highly skilled workforce, unmatched infrastructure, and significant investments in becoming a manufacturing hub for future industries. Here are six reasons why you should invest in Mainland China:

1. World's largest domestic market
2. World's leading manufacturing hub
3. Multiple special economic zones and business incentives
4. Advanced infrastructure and supply chain
5. Network of Free trade and tax agreements with other countries
6. Ever-changing market and business environment

Employment Contract

Employers are obligated by labour law to establish a written agreement with their employees within a month of the employee's start date at the company. According to the China Labour Contract Law of 2008, there are three categories of employment contracts:

Fixed Term Contracts

The fixed-term contract establishes a specific duration for the employer-employee relationship and can be utilised for both part-time and full-time positions. The fixed-term contract is the most utilised in employment arrangements among the various types of labour contracts.

To be eligible for a part-time fixed contract, workers must meet five criteria:

- Work hours must not exceed four hours per day or 24 hours per week.
- There is no probation period, allowing the employer or the employee to terminate the agreement at any time.
- Severance compensation is not applicable to part-time employees.
- Payment must be made to the employee at least every 15 days.
- A written contract is not mandatory for part-time employees.

Part-time employment is suitable for roles where tasks can be completed within a relatively short daily timeframe.

Non-fixed Term Contracts

The non-fixed term contract provides the employee with a high level of job security until their retirement due to its unrestricted duration and limited reasons for termination. More specifically, an employee under a non-fixed term contract can only be dismissed under circumstances that warrant immediate termination, dismissal with a 30-day notice, or during a mass lay-off. In the event of a mass lay-off, employees with non-fixed term contracts are given priority over other employees.

Project-based Contracts

This type of contract focuses on the task or project assigned to an employee rather than the duration of employment. Once the designated project is completed, the employment arrangement ends, and the company is required to provide severance pay to the employee. This type of contract does not have probationary periods.

Probation Period

This law establishes that the probationary period cannot be longer than:

Employment Contract Term	Probation Duration
1 year or less	1 month
More than 1 year but less than 3 years	2 months
More than 3 years	6 months

Leave Types

Annual Leave

The number of annual leave (ranging from **5 to 15 days**) entitled to employees is determined by the employee's cumulative working years, not just the length of service with the current employer:

Length of Service	No. of Annual Leave Entitled
1 to 10 years	5 days
10 to 20 years	10 days
20 years or more	15 days

Sick Leave

Employees are entitled to a sick leave period ranging from **3 to 24 months** due to illness or non-work-related injuries. The period varies depending on the length of service with their current company and their total years of work experience. The distribution of leave is as follows:

Length of Service	No. of Sick Leave Entitled
Less than 5 years	6 months
More than 5 years	9 months
More than 10 years	12 months
More than 15 years	18 months
20 years or more	24 months

Employees are usually compensated by the company at a reduced rate of their normal wage during their sick leave period, which may be less than the local minimum wage but not less than 80% of the minimum wage. However, this depends on the seniority of the employee and may differ from different states in Mainland China, for example:

City	Compensation Type	Typical Provisions
Shenzhen	Capped at a percentage of the employee's salary	Not less than 60% of employee's normal wage
Beijing	Per employment contract or corporate system	Company compensate sick pay as agreed in the employment contract
Shanghai	Pro-rated percentage of salary based on seniority	Compensation is made according to the employee's length of service (increment for every 2 consecutive years of service at the company)

Maternity Leave

Female employees are entitled to **98 days** of maternity leave, which includes 15 days of prenatal leave. For multiple births, 15 days of additional maternity leave will be granted for each additional child.

Female employees may also be entitled to extended maternity leave, depending on the state:

City	Basic Maternity Leave	Extended Maternity Leave
General	98 days	30-90 days
Beijing		60 days
Shanghai		60 days
Guangzhou & Shenzhen		80 days

Paternity Leave

Male employees are entitled to a maximum of **15 days** of paternity leave. However, this varies according to region. In Shanghai, the paternity leave entitlement is 10 days.

Childcare Leave

Childcare leave policies in Mainland China vary according to region. In general, couples are each entitled to **5 days** of childcare leave per year until the child reaches 3 years of age.

Termination of Employment

The China Labour Contract Law provides a high level of job security for workers. As a result, terminating an employee in China is difficult and costly in comparison to other countries.

Type of Termination	Grounds for Dismissal	Contract Type	Severance Payment
During Probation	<ul style="list-style-type: none"> Employee does not meet the job requirements stated in the job description. Serious violation of company rules. Serious loss attributed to the employee. Fraud committed to secure the labour contract. Criminal offence committed during employment. Employee taking a second job that negatively affects the employer. Incompetence for the position even after training or job transfer. Employee is unable to work due to sickness or injury. 	Fixed Term & Non-fixed Term	No
Mutual Agreement	Both the employer and employee have reached a mutual separation agreement to end the contract.	Fixed Term & Non-fixed Term	Yes (if the termination is put forward by the employer)
Immediate Dismissal (unilaterally)	<ul style="list-style-type: none"> Serious violation of company rules. Serious loss attributed to the employee. Providing false information to the employer. Criminal offence committed during employment. Employee taking a second job that negatively affects the employer. 	Fixed Term & Non-fixed Term	No
30 Days' Notice (unilaterally)	<ul style="list-style-type: none"> Employee is incompetent for the position. Employee is unable to work due to sickness or injury. Job cannot be performed due to a fundamental change in objective circumstances. 	Fixed Term & Non-fixed Term	Yes
Not Renewing Contract	After the conclusion of one or two fixed term contracts, the contract automatically expires. This differs according to the city.	Fixed Term	Yes (unless the employee refuses the contract renewal or salary increase proposed by the employer)

Type of Termination	Grounds for Dismissal	Contract Type	Severance Payment
Mass Layoff	<ul style="list-style-type: none"> Company being restructured due to PRC Enterprise Bankruptcy Law Serious difficulties in productions or operations. Company implementing changes in production methods, resulting in staff redundancy. Objective economic situation rendering employment impossible. 	Fixed Term & Non-fixed Term	Yes
Automatic Termination upon Bankruptcy/Revoke/Dissolution	<ul style="list-style-type: none"> Employer is declared bankrupt pursuant to the law. Employer's business license is revoked. Employer is ordered to close down or revoked by government bureaus. Employer has decided to dissolve prematurely. 	Fixed Term & Non-fixed Term	Yes
Termination with 30 Days' Notice and Mass Layoff not allowed for	<ul style="list-style-type: none"> Employee is suspected of having occupational disease(s) and awaiting diagnosis. Employee has completely or partially lost labour capability due to occupational disease(s) or work-related injury. Employee is still in the legal recuperation period for non-work-related illness/injury. Employee is pregnant, on maternity leave, or in the breastfeeding period. Employee has continuously worked for the employer for more than 15 years and is less than five years away from retirement. 		

Public Holiday

Mainland China observes a total of **26 days** of national holidays:

Public Holiday	Date
New Year	1-2 January
Spring Festival	21-27 January
Ching Ming Festival	5 April
Labour Day	29 April - 3 May
Dragon Boat Festival	22-24 June
Mid-Autumn Festival	29-30 September
National Day	1-6 October

Statutory Salary & Wages

Minimum Wage

According to China's provisions on minimum wage, the legal minimum wage refers to the lowest remuneration that employers must pay employees who work normal hours as stated in their contracts.

There are two types of minimum wage standards: monthly and hourly. The monthly standard applies to full-time employees, while the hourly standard applies to part-time employees (including temporary workers).

As of 2023, the minimum wage for full-time and part-time employees in Shanghai are as such:

	Minimum Wage
Full-time Employee	2,590 CNY per month
Part-time Employee	23 CNY per hour

Employee Benefits

With the increase in the minimum wage, the minimum standards for employee benefits in China also see a rise. Here are some regulations related to minimum wage standards and employee benefits:

- The **minimum contribution base for the housing fund** is the same as the local minimum wage standard in the region/province.
- The **wage of probationary employees** with regular attendance should not be lower than the wage standard, as per Article 20 of the Labour Contract Law.
- The **sick leave wage** shall not be lower than 80% of the local minimum wage, as stated in the Opinions on Several Issues concerning the Implementation of the Labour Law of the People's Republic of China (Lao Bu Fa [1995] No.309.)
- **Severance pay** must not be lower than the local minimum wage standard, according to Article 27 of the Implementation Regulations for the Labour Contract Law of the People's Republic of China.
- The **labour dispatch agency** should compensate employees without assigned work duties with monthly remuneration based on the local minimum wage standard.
- As per the Guiding Opinions of the Ministry of Human Resources and Social Security and the Ministry of Finance on Adjusting the Criteria for Unemployment Insurance Benefits (Ren She Bu Fa [2017] No. 71), all provinces are obligated to increase their **unemployment insurance benefits** to 90% of the local minimum wage standard.

Base Salary and Bonus

The labour contract should clearly specify the base salary, which may be supplemented by one-time payments. Employers should exercise caution when considering non-base salary payments and may choose to provide them as annual bonuses. However, the provision of annual bonuses is not mandatory if employee performance is low.

Bonuses can be awarded at various times, and employees have the opportunity to reduce their tax liability for one-time annual bonuses under China Individual Income Tax (IIT) law.

Allowances

The Chinese Tax Bureau allows foreign staff, including individuals from Hong Kong, Macau, and Taiwan, to deduct specific “allowances” from their monthly salary for tax calculation purposes.

To be eligible for these deductions:

- The employment contract must clearly state the amount allocated to the employee as each specific allowance. In certain cases, a board resolution may be required depending on the company’s location.
- Each month, the employee must provide evidence, usually in the form of an official invoice called a “fapiao,” to demonstrate that the allowance amount was used for the contracted services. These official invoices remain valid until December 31, 2023.

The deductible allowances include:

- Meal allowance
- Housing allowance
- Laundry allowance
- Children’s education allowance
- Home visit allowance

While the law does not explicitly define the percentage of an employee’s salary that can be allocated to allowances, it states that the allocation should be “reasonable.” Many companies allocate approximately 30% of the foreign employee’s total salary as allowances. However, there is a risk of the tax office questioning this allocation, so it is advisable to set the allowance proportion at or below this level.

Overtime Pay

The regulation of overtime in China is governed by the People’s Republic of China Labour Law, which provides guidelines for overtime pay based on different work-hour systems used by employers, including standard, comprehensive, or non-fixed systems.

Under the standard work-hour system, employees should not exceed **8 hours per day** and **40 hours per week**. They should also have at least **one rest day per week**. This model is commonly followed in white-collar jobs in China.

In the standard work-hour system, the following overtime rates apply:

Time of Work	Hourly Salary Percentage
Extra hours worked on workdays	150%
Hours worked on weekends	200%
Hours worked on public holidays	300%

Employment Cost

Cost Type	Employer	Employee
Pension Insurance	16%	8%
Unemployment Insurance	1%	0.5%
Work-related Injury Insurance	0.2% - 1.9%	NIL
Medical Insurance	10.5%	2%
Housing Fund (Basic Mandatory)	5% - 7% each	
Housing Fund (Supplementary Autonomous)	1% - 5% each	

Income Tax

The income tax for residents and non-residents in Mainland China is calculated on a monthly basis using the progressive annual tax rates, applied to their employment income using the cumulative withholding method.

Tax Rates for Residents

Annual Taxable Income (CNY)	Tax Rate (%)	Deductible Amount (CNY)
0 - 36,000	3	0
36,000 - 144,000	10	2,520
144,000 - 300,000	20	16,920
300,000 - 420,000	25	31,920
420,000 - 660,000	30	52,920
660,000 - 960,000	35	85,920
Over 960,000	45	181,920

Tax Rates for Non-Residents

Annual Taxable Income (CNY)	Tax Rate (%)	Deductible Amount (CNY)
0 - 3,000	3	0
3,000 - 12,000	10	210
12,000 - 25,000	20	1,410
25,000 - 35,000	25	2,660
35,000 - 55,000	30	4,410
55,000 - 80,000	35	7,160
Over 80,000	45	15,160

Social Security

Social security contributions towards pension, medical, and other relevant funds are mandatory for Chinese employees and foreign individuals holding a China work permit as mandated by the China Social Security Law.

The specific monthly rates of social security contributions made by both the employer and the employee, applicable caps, and other relevant details are determined by local regulations, which may vary across local jurisdictions.

To provide an illustration, the contribution rates and caps applicable to residents of Shanghai, Beijing, and Guangzhou are as follows:

City	Shanghai		Beijing		Guangzhou	
	Employer	Employee	Employer	Employee	Employer	Employee
Pension	8%	16%	8%	16%	8%	15%
Medical	2%	10%	2%	9.8%	2%	6.85%
Unemployment	0.5%	0.5%	0.5%	0.5%	0.2%	0.32% - 0.8%
Work-related Injury	-	0.16% - 1.52%	-	0.2% - 1.9%	-	0.16% - 1.12%
Total	10.5%	26.66% - 28.02%	10.5%	26.5% - 28.2%	10.2%	22.33% - 23.77%

Fair Employment Liability

Law of the People's Republic of China on Employment Contracts – Article 8

When an employer hires an employee, they are required to provide truthful information regarding the nature of the work, working conditions, workplace location, occupational hazards, production safety conditions, labour compensation, and any other information the employee requests. Similarly, the employer has the **right to obtain basic information from the employee that directly relates to the employment contract, and the employee is obligated to provide accurate information.**

Law of the People's Republic of China on Employment Contracts – Article 26

An employment contract may be deemed invalid or partially invalid if:

- (1) A party uses deceptive or coercive means or takes advantage of the other party's difficulties to induce the other party into agreeing to a contract or making amendments that contradict their true intentions.

Law of the People's Republic of China on Employment Contracts – Article 39

An employer may terminate an employment contract if the employee:

- (1) Is proved to not meet the employment requirements during the probation period.

Article contributed by

Kevin Zhou

Senior Consultant, Shanghai

E: kevin.zhou@biposervice.com

Around the World with BIPO

Singapore

10-11 May
HR Tech Festival Asia 2023



30 May
SME Centre@SICCI Appreciation Night
with Albert Liew



Belgium

24 May
TECH.EU Summit
with Laurent-Pierre Sans



Mainland China

25 May
Understanding Mainland China's
Labour Laws and Employment
Regulations with Kevin Zhou



Philippines

5-6 May
Philippine SME Business EXPO



About BIPO

Established in 2010 and headquartered in Singapore, BIPO is a **global payroll and people solutions provider**. We offer a total workforce solution that includes our Human Capital Management (HCM) suite, Global Payroll Outsourcing (GPO) and Employer of Record (EOR) service across **150+ global markets**.

Connect with our experts today: hello@biposervice.com

Copyright © 2023 BIPO Service. All rights reserved.

Find out more



www.biposervice.com



www.facebook.com/biposvc



www.linkedin.com/company/bipo-svc

