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Understanding Mainland China's Labour Laws and Employment Regulations

Overview

Employment law in China is complex, and maintaining compliance is a challenging task for foreign companies that aren't up to date on current legal and labour requirements in the country.

With Mainland China accumulating advantages to backup its outstanding position in the global market and maintain investor confidence, including a huge market growth potential, a skilled labour pool, and investment in its capabilities as a manufacturing base for industries of the future, international businesses can tap into investing in China market to expand their global workforce.

Read a brief introduction to the country's labour employment laws and regulations.

Basic Country Facts



Capital
Beijing



Population
1,455,734,819
Worldometer



Currency
Chinese Yuan (CNY)



GDP per Capita
USD 12,556.30 (as of 2021)
The World Bank

Legal Definition of Labour Relations

Labour Law of the People's Republic China (Article 2)

This Law shall apply to all enterprises and individual economic organizations within the territory of the People's Republic of China (hereinafter referred to as "employers") and workers who form a **labour relationship** therewith.

- The subject qualifications of the employers and employees as stipulated by laws and regulations.
- The various labour regulations and systems formulated by the employers in accordance with the law are applicable to the employees. The employees are subject to the labour management of the employers and engage in the paid work arranged by the employers; and
- The work provided by the employees is part of the business of the employers.

Subjected to legal regulation after establishing labour relationship:

- ✓ Maximum working hour
- ✓ Minimum wage
- ✓ Days off and statutory holidays
- ✓ Leave (with pay)
- ✓ Legal grounds and restrictions on dismissal
- ✓ Statutory termination indemnification
- ✓ Social insurance obligation

Part-time employment: refers to a form of labour for which the remuneration is mainly calculated on an hourly basis, and the average working hours of an employee **per day shall not exceed four hours**, and the **aggregate working hours per week shall not exceed 24 hours** for the same Employer.

Subjected to legal regulation:

- ✓ Maximum working hour
- ✓ Minimum wage
- ✓ Days off and statutory holidays
- ✗ Leave (with pay)
- ✗ Legal grounds and restrictions on dismissal
- ✗ Statutory termination indemnification
- ✓ Work-related Injury Insurance

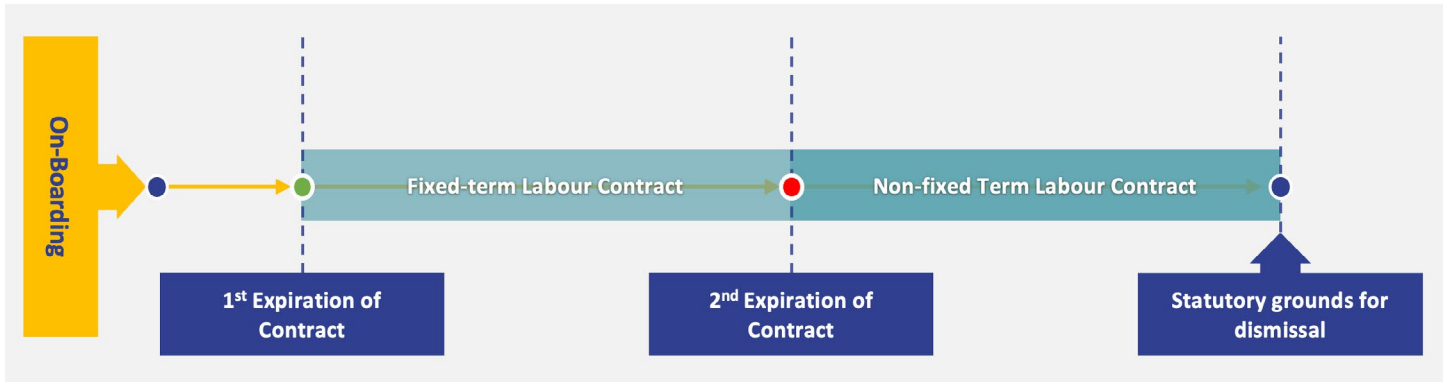
Rules Concerning the Form and Duration of Labour Contracts with Employees

Types of labour contracts:

China Mainland	Contract Starting Date	Termination Date	Probation Period
Fixed term	Clear	Clear	Set as per the contract term, and it shall not exceed 6 months
Non-fixed term	Clear	Set until the legal termination conditions are met	Shall not exceed 6 months
Based on certain work assignments	Clear	With the completion of the relevant work items as a mark	-

(Generally) Circumstance to Enforce the Execution of an Open-ended Labour Contract

- The employee has been working for the employer for ten consecutive years;
- Where a fixed-term labour contract has been **concluded twice on a continuous basis**, and the employee, who is not under any of the circumstances stipulated in Article 39 and Items 1 and 2 of Article 40 hereof, **renews his or her labour contract**.



Mutual Agreement of the Parties	The Employee	Immediate Resignation of the Employee	Employer (negligent)	Employer (without negligent)	Termination of the Labour Contract
Advanced notice period: Upon discussion	Advanced notice period: Statutory	Advanced notice period: 0	Advanced notice period: 0	Advanced notice period: 30 days	Advanced notice period: 0 (with exceptions)
Proposed by the employee Acceptance by the employer	30 days in advance	Failure to provide labour protection or working conditions	Failure to meet recruitment conditions within probation period	Unable to work or arrange other work upon the expiry of medical treatment period	Expiry of employment contract
Proposed by the employer Acceptance by the employee	Probationary period 3 days in advance	Delay in payment of wages	Material breach of rules and regulations	Incompetent & still incompetent after post transfer and training	On pension insurance/up to retirement age
		Forced labour, hazardous work	Fraudulent negligence, significant loss	Material change in objective circumstances agreement to amend a labour contract fails	Dead or declared dead
		Failure to pay social security contributions	Repeated establishment of labour relationship	Economic retrenchment	Bankruptcy of the employer
		Rules and regulations unlawfully damage the rights and interests of labourers	Invalidity of contract due to fault of labourer		Early dissolution of employer etc
		Invalidity of contract caused by fault of employer	Being investigated for criminal liability		

Cause for dismissal and the notice period are statutory, and the right to reasonable causes or negotiated conditions of dismissal is excluded.

Statutory Wage Structure & General Rules of Payment

Wages

1. Wages are paid to workers by employers in various forms in accordance with the provisions of a labour contract.
2. Wages shall be paid in legal tender. Payment in kind and in negotiable securities may not be substituted for payment of legal tender.

May comprise of the following:

- Hourly wage
- Piece rate wage
- Bonus
- Allowance
- Subsidy
- Overtime pay
- Wages paid in exceptional circumstances

Payment Carriers		Legal Currency (CNY)			
Payment Period	Full-time	Salary shall be paid at least once a month	Eligible method of payment	Time of payment	Can be collected in advance by other person as entrusted
			Personal receipt	Paid in advance in case of statutory holidays	
	Bank transfer		Paid at the agreed time		
	Part-time	Shall be paid once every 15 days			
Provisions of payrolls (keep for two years for reference)		<ul style="list-style-type: none"> • Wage amount, item, time, name of employee 			
Items that may be deducted by Law		<ul style="list-style-type: none"> • Individual income tax withheld and remitted by the employer • Various social insurance premium that shall be borne by the employee that the employer withholds and pays • Child support and maintenance payments that shall be withheld according to the judgements and rulings of the court • Other expenses that can be deducted from the employee's salary as stipulated by laws and regulations (housing provident fund, workers' dues, etc.) 			
		<ul style="list-style-type: none"> • Compensation for the economic loss caused to the employer due to the employee's reason: the monthly deduction shall not exceed 20% of the individual's monthly salary and the actual salary after deduction shall not be lower than the minimum salary 			

Hourly Wage & Piece Rate Wage

Hourly wages refer to:

Labour remuneration paid to individuals according to the time rate and working hours. For example:

1. Wages paid for finished works according to the time rate;
2. Basic wages and job (post) wages paid to employees by an entity that implements structural wages.

Piece rate wages refer to:

Labour remunerations paid for finished work according to the piece-rate unit price. For example:

1. Wages paid to individuals according to the labour quota and piece rate determined in accordance with the law;
2. Wages paid to individuals in the form of task contract; and
3. Wages paid to individuals by drawing a percentage of commission from turnover or profit.

Minimum Wage

- The minimum remuneration for labour payable by the employer in accordance with the law, provided that the worker has provided normal labour during the statutory working hours or the working hours agreed in the employment contract.
- Employers who adopt such forms of wages as piece-rate wages or commission wages shall not pay workers less than the corresponding minimum wage on the basis of scientific and reasonable labour quotas.

Normal Labour

- Work performed during statutory working hours or during the working hours agreed in the employment contract.
- During statutory leave such as annual leave, marriage and bereavement leave, maternity leave, etc.
- During statutory working hours while participating in social activities in accordance with the law.

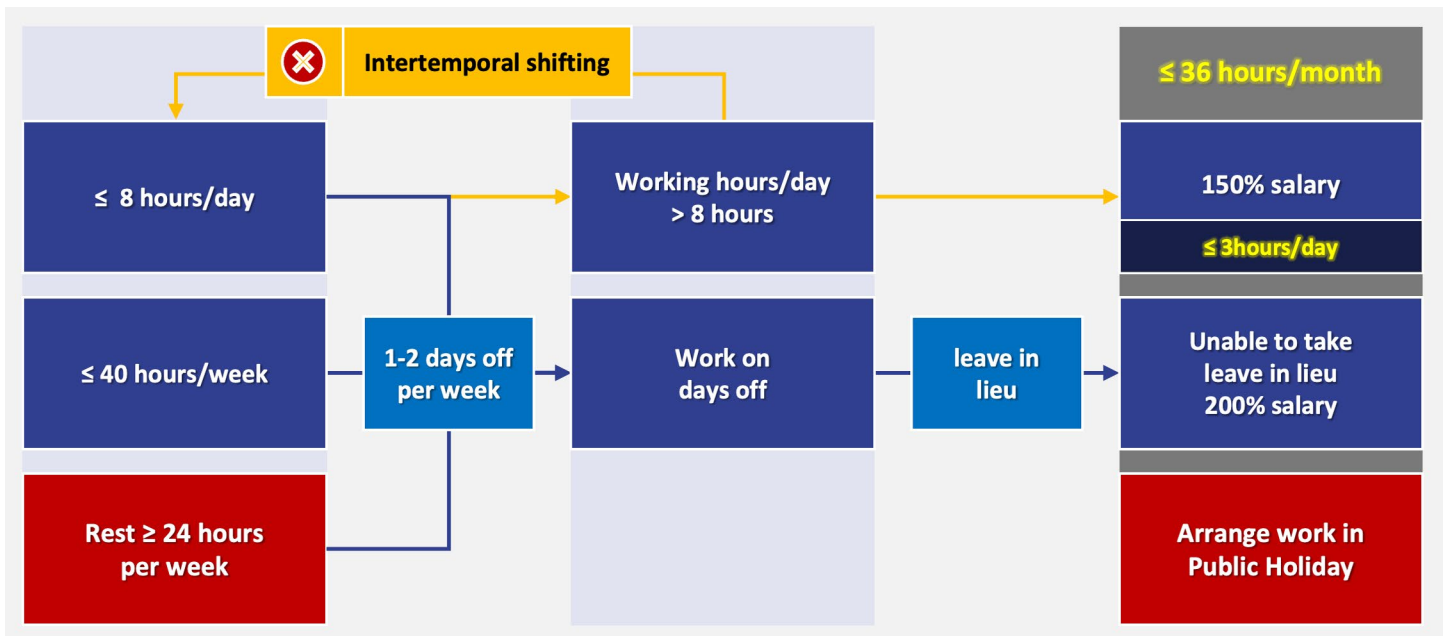
	Full-time labour relationship	Part-time labour relationship
2023	(Shanghai) 2,590 yuan/month	(Shanghai) 23 yuan/hour

Bonus, Allowance & Subsidy

Bonus	Excess labour remuneration paid to employees and labour remuneration for income and cost savings	<ul style="list-style-type: none">• Annual salary of 13 months: to be agreed by both parties• Year-end bonus: to be agreed by both parties• Bonus paid based on deliverables: to be agreed by both parties
Allowance	Allowances to compensate employees for special or additional labour consumption	Compulsory payment matters: <ul style="list-style-type: none">• Allowances established to safeguard the health of employees working in special environments and positions, such as high temperature allowances, field allowances, underground allowances, sanitation and epidemic prevention allowances and regional allowances for employees working in high temperature, underground, dusty and toxic environments, and those exposed to radiation or in special areas.
Subsidy	Various allowances paid to ensure that employees' wage levels are not affected by price increases or changes	N/A

Working Hours & Pay for Overtime

Labour Law	Article 36	<ul style="list-style-type: none"> The State shall practice a working hour system wherein laborers shall work for no more than eight hours a day and no more than 44 hours a week on the average.
	Article 38	<ul style="list-style-type: none"> The employer shall guarantee that its laborers have at least one day off a week.
	Article 39	<ul style="list-style-type: none"> If an enterprise can not follow the stipulations in Article 36 and Article 38 of this Law due to special characteristics of its production, it may follow other rules on work and rest with the approval by labor administrative departments.
	Article 41	<ul style="list-style-type: none"> The employer can prolong work hours due to needs of production or businesses after consultation with its trade union and laborers. The work hours to be prolonged, in general, shall be no longer than one hour a day. If an extension of working hours is needed for special reasons, the overtime shall not exceed 3 hours per day under the condition that the health of workers is guaranteed. However, the amount of overtime shall not exceed 36 hours per month.
The State Council <Provisions of the State Council on Working Hours of Workers and Staff>	Article 3	<ul style="list-style-type: none"> The State stipulates the system of working 8 hours per day, and 44 hours per week on the average for workers and staff.

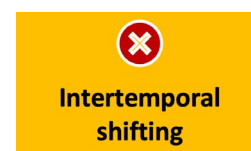


Working Hours & Leave

Public Holiday

	Public Holiday	Dates	Holiday Arrangements
Applicable to all	New Year's Day	January 1st	One day off
	Spring Festival	Lunar New Year	Three days off from the 1st to 3rd Lunar New Year
	Tomb Sweeping Day	Lunar Ching Ming	One day off
	May Day	May 1st	One day off
	Dragon Boat Festival	May 5th Lunar New Year	One day off
	Mid- Autumn Festival	August 15th Lunar New Year	One day off
	National Day	October 1st	Three days off from October 1st to 3rd
	Women's Day	March 8th	Half day off for Women
Applicable to some	Youth Day	May 4th	Half day off for youth*
	Children's Day	June 1st	Half day off for children under 14*
	Army Day	August 1st	Half-day holiday for soldiers in active service

Arrange work:
300% daily wage



*Note:

- Where a holiday falls on a Saturday or Sunday, there shall be no compensatory leave.
- The employer shall pay salary remuneration to the employees who participate in celebrations organised by the society or the employer and who works as usual, but overtime salary shall not be paid for the holidays.

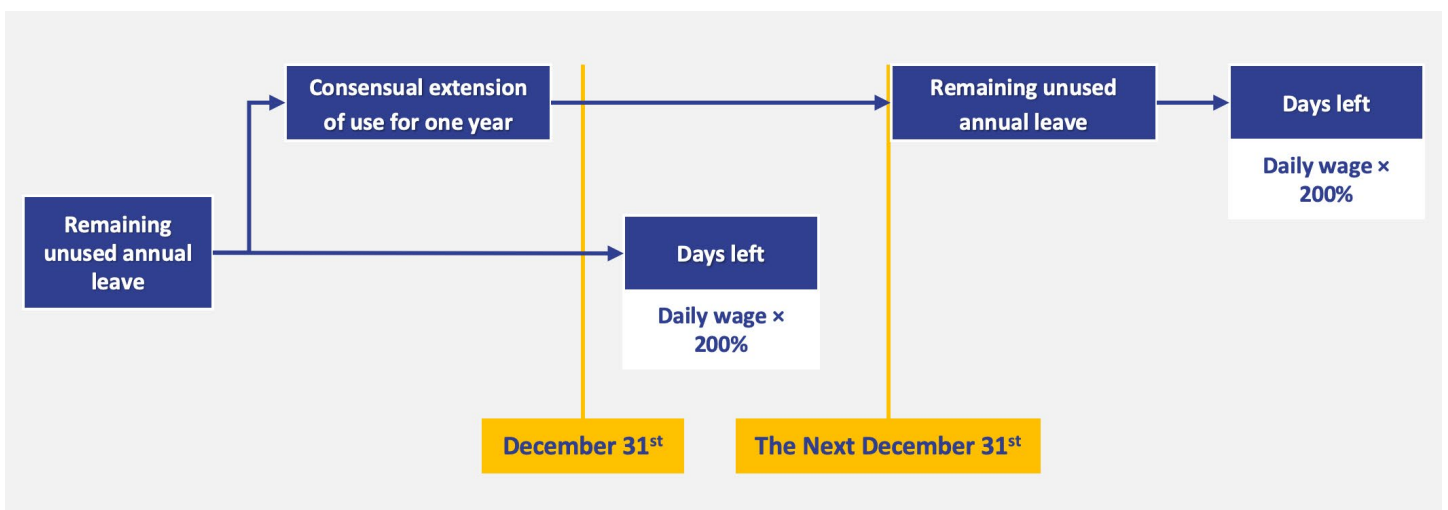
Annual Leave

- The statutory holidays and rest days shall not be included in the annual leave period.
- Family leave, marriage leave, bereavement leave, maternity leave and other leaves regulated by the state, and the period of suspension of work but reservation of salary for work-related injuries shall not be calculated into annual leave.

Initial Conditions	Social Accumulation Years of work	Termination Date	Probation Period
≥ 1 year of continuous employment of work experience	More than one year but less than 10 years	5 days	Salary × 100%
	More than 10 years but less than 20 years	10 days	
	≥ 20 years	15 days	

Liability for untaken annual leave

Exemption arrangements	Summer and winter holidays, with more days off than annual leave		
	Leave of absence of more than 20 days in total without deduction of salary as stipulated by the Company		
	Accumulated sick leave during the year	Working more than 1 year but less than 10 years	≥ 2 months
		Working more than 10 years but less than 20 years	≥ 3 months
		Working more than 20 years	≥ 4 months
Written offer of annual leave exclusion			



Marriage Leave & Bereavement Leave

	Marriage Leave	Bereavement Leave
Trigger Conditions	The employee himself gets married	Death of an immediate family member (i.e. parents, spouse, children)
Days	1-3 days + additional days specified by each region	1-3 days
Treatment	Salary × 100%	

Sick Leave

LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS (Article 40)

- An Employer may terminate an employment contract by giving the Employee himself 30 days' prior written notice, or one month's wage in lieu of notice, if:
- (1) after the set period of medical care for an illness or non-work-related injury, the Employee can engage neither in his original work nor in other work arranged for him by his Employer.

The medical period refers to the time limit during which an enterprise employee may not terminate his/her employment contract if he/she **stops working** (certification for sick leave, i.e. sick leave form) for treatment of **illness or injury not caused by work** (medical diagnosis).

- During the period of treatment for illness or injury not arising from work, the enterprise shall pay the employee sick pay or sickness relief during the prescribed medical period in accordance with the relevant regulations, which may be less than the local minimum wage but not less than 80% of the minimum wage.
- <Opinions of the Ministry of Labour on Certain Issues Concerning the Implementation of the Labour Law of the People's Republic of China> Article 59

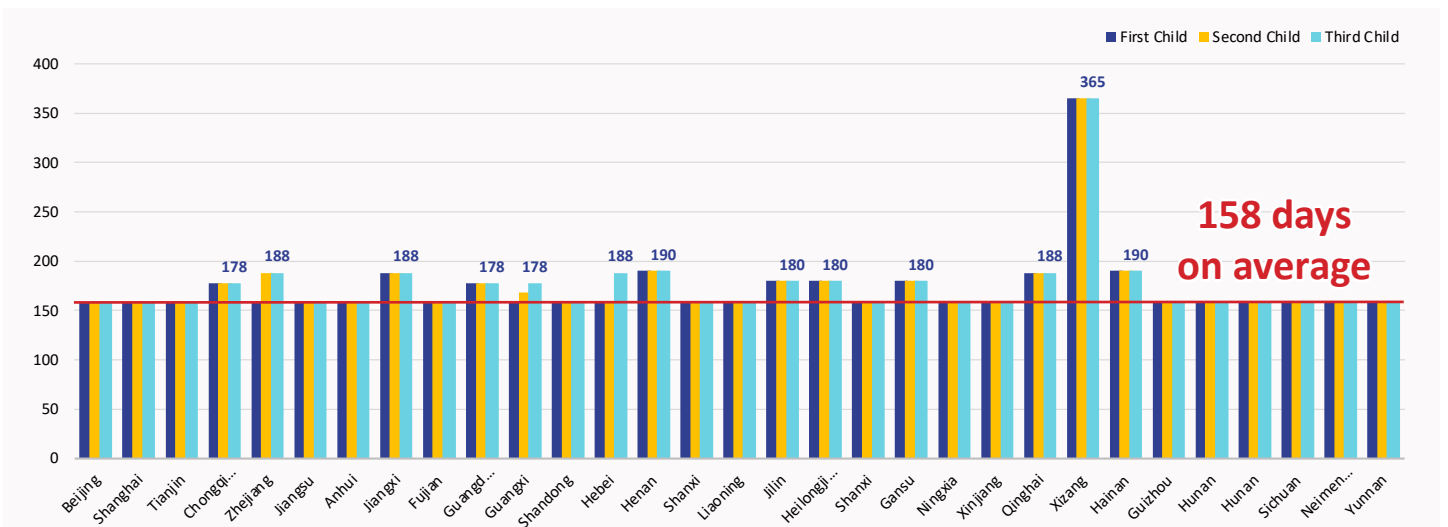
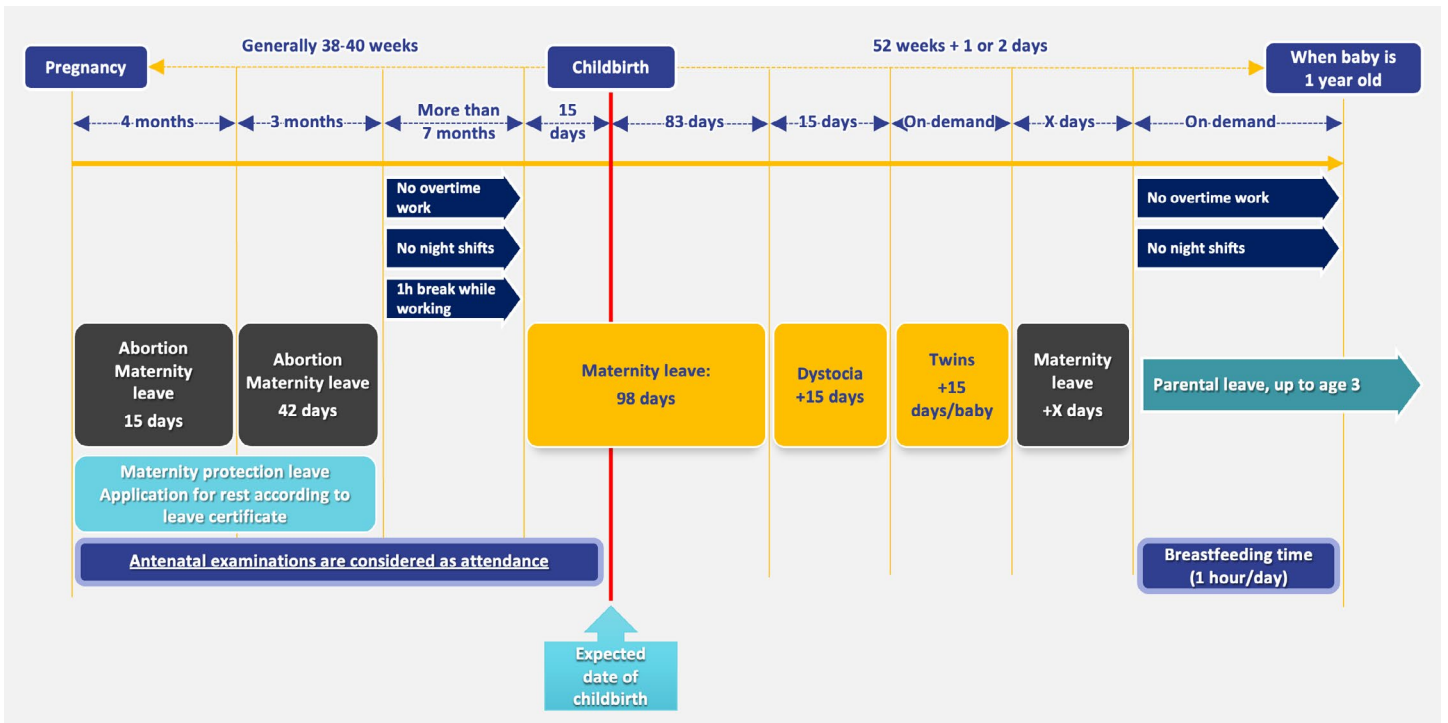
Types	Representatives	Typical Provisions
Capped at a percentage of the employee's salary	Shenzhen	Not less than 60% of employee's standard salary
As per corporate system or contractual agreement	Beijing	The enterprise pays sick pay as agreed in the employment contract or collective contract
Pro-rata payment of salary in relation to length of service	Shanghai	Payments are set according to the employee's length of service (2 year increments)

Provisions on Medical Treatment Periods for Enterprise Employees Suffering from Sickness or Injury not Attributable to Work (Ministry of Labour [1994] No. 479)

Actual years of working experience	Years of service in this company	Medical treatment period	Medical period calculation cycle
Less than 10 years	Less than 5 years	3 months	6 months
	More than 5 years	6 months	12 months

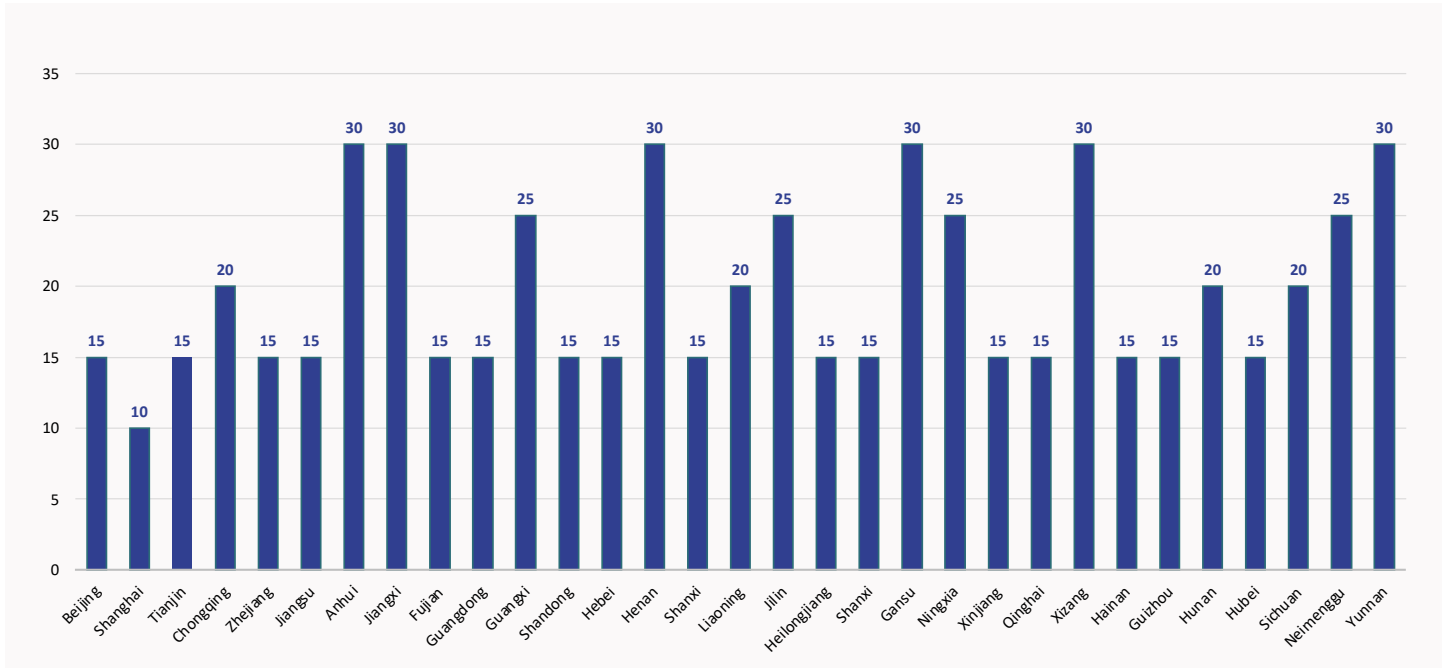
Actual years of working experience	Years of service in this company	Medical treatment period	Medical period calculation cycle
More than 10 years	Less than 5 years	6 months	12 months
	More than 5 years but less than 10 years	9 months	15 months
	More than 10 years but less than 15 years	12 months	18 months
	More than 15 years but less than 20 years	18 months	24 months
		24 months	30 months

Maternity Leave



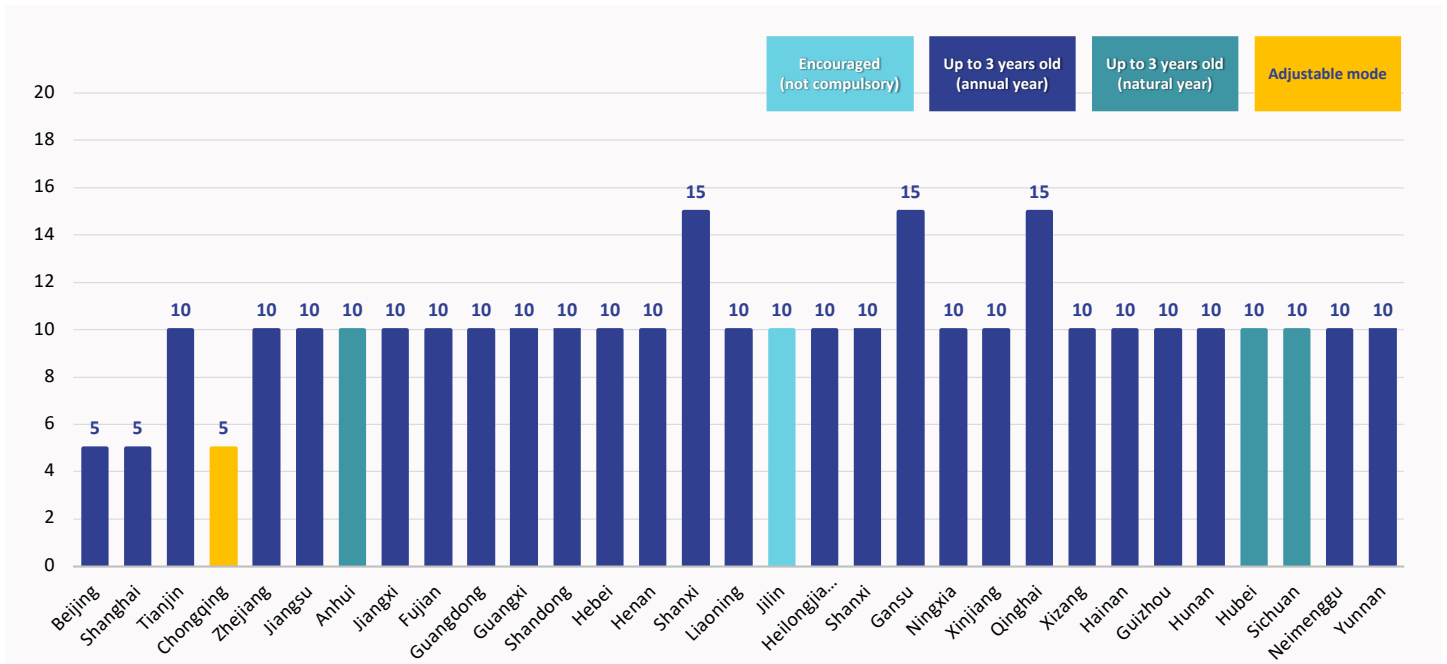
Nursing Leave

The number of nursing leave days that female employees are entitled to vary across regions. Below is an illustration of the number of days given in the various regions:



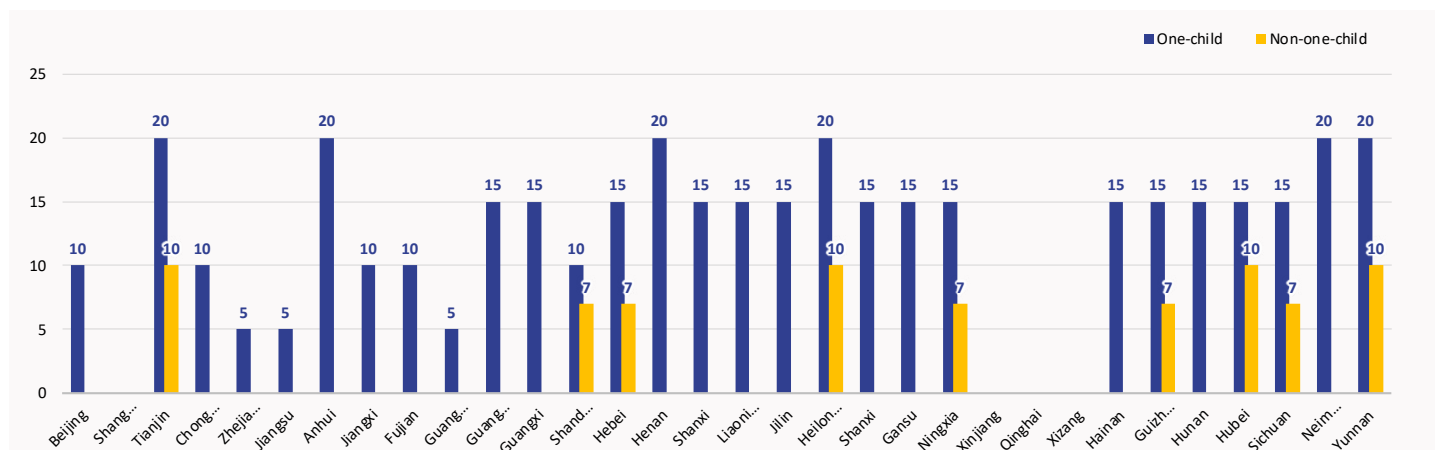
Childcare Leave

The standard for childcare leave (parental leave) in most regions is 10 days, while some cities like Beijing and Shanghai offer relatively less (5 days). On the other hand, Shanxi, Gansu, and Qinghai offer 15 days. Below is an illustration of the number of days given in the various regions:



Eldercare Leave

In 2022, China began implementing a special leave called the Eldercare leave, which is mainly for parents over 60 years old. The number of days given is dependent on whether the individual is a one-child or a non-one-child. Almost all the province has eldercare leave, but it has yet to be implemented in Shanghai, Xinjiang, Qinghai, and Xizang. Below is an illustration of the number of days given in the various regions:



Keywords: **Parents 60 years old+** **Cumulative** **Every year** **Inpatient treatment (with exceptions)**

The Obligation to Participate in Social Security and the Impact on Employment Costs

Contribution Matters (Shanghai, year 2022)		Employer (ER)	Employee (EE) • China (Mainland) • China (Taiwan, HK, Macau) • Foreigners	Overseas employees exemption	Insurance base	Lower limit	Upper Limit
Social Insurance	Pension	16%	8%	Reciprocal exemptions based on bilateral agreements	Employee's previous year full-calibre wage income monthly average	Province-wide (level) full-calibre previous year average wage of employed persons in urban units	
	Unemployment	1%	0.5%			60%	300%
	Work-related Injury	0.2-1.9%	-			(Year 2022) 11,396	
Medical Insurance		10.5%	2%	N/A		34,188	6,520
Total rate		26.7-29.4%	10.5%				
Housing Fund	Basic (Mandatory)	5-7% each		Voluntary participation	Reference to social security base	Previous year mini-mum wage	Social equality 300%
	Supplementary (Autonomous)	1-5% each					

Basic Rules for Rescission and Termination of Labour Contract and Statutory Compensation Liability

Termination in China can be divided into 2 categories; one is by mutual agreement based on the employer's will, and the other is based on the employee's personal wish to terminate the contract.

Mutual Agreement of the Parties	The Employee	Immediate Resignation of the Employee	Employer (negligent)	Employer (without negligent)	Termination of the Labour Contract
Advanced notice period: Upon discussion	Advanced notice period: Statutory	Advanced notice period: 0	Advanced notice period: 0	Advanced notice period: 30 days +1	Advanced notice period: 0 (with exceptions)
Proposed by the employee Acceptance by the employer	30 days in advance	Failure to provide labour protection or working conditions	Failure to meet recruitment conditions within probation period	Unable to work or arrange other work upon the expiry of medical treatment period	Expiry of employment contract
Proposed by the employer Acceptance by the employee	Probationary period 3 days in advance	Delay in payment of wages	Material breach of rules and regulations	Incompetent & still incompetent after post transfer and training	On pension insurance/up to retirement age
	Cause for dismissal and the notice period are statutory, and the right to reasonable causes or negotiated conditions of dismissal is excluded.	Forced labour, hazardous work	Fraudulent negligence, significant loss	Material change in objective circumstances agreement to amend a labour contract fails	Dead or declared dead
		Failure to pay social security contributions	Repeated establishment of labour relationship	Economic retrenchment	Bankruptcy of the employer
		Rules and regulations unlawfully damage the rights and interests of labourers	Invalidity of contract due to fault of labourer		Early dissolution of employer etc
		Invalidity of contract caused by fault of employer	Being investigated for criminal liability		

Those highlighted in yellow can be known as due to the willingness of the company, whether it is due to subjective or objective reason, feels that the individual is unable to fulfil the labour contract. In such case, the company is liable for the corresponding economic compensation responsibility, which can be calculated using this formula:

	Coefficient standard (N)		
Working Period	Date of departure – Commencement date = A year + B month		
	A	N	
	B	< 6 months	0.5 months
		≥ 6 months	1
Upper limit	Base cap, a maximum of 12 months		

	Coefficient standard	
Scope	Average due to salary income for 12 months prior to rescission or termination of the labour contract	
	Include	Hourly wages or piecework wages and bonuses, allowance, and subsidies
	Exclude	Shares, options, bonuses and other proceeds related to investments
Overtime (Shanghai)		
Upper limit	Shanghai (Year 2022): $11,396 \times 3 = 34,188$ RMB	
Lower limit	Shanghai: 2,590 RMB	

Restrictions on Contract Termination

In the matter of non-negligent termination of the labour contract, where the employee made no mistake but fulfilling the labour contract no longer meets expectations, the company is legally given the right to terminate the contract.

However, there are special circumstances where employers are not allowed to terminate a labour contract. The prohibition of dismissal can be outlined as such:

Employer (without negligent)	Termination of Labour Contract
<ul style="list-style-type: none"> • Prior to departure inspection for positions with potential occupational hazards • Suffering from occupational disease • Work Injury Classification (Part) Funeral • During the Medical Treatment Period • Female employees during the Three-Month Period • 15+5 • Other statutory circumstances 	Extension of this contract upon expiration

LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS (Article 48)

If an **Employer terminates or ends an employment contract in violation of this Law and the Employee demands continued performance of such contract**, the Employer shall continue performing the same. If the Employee **does not demand continued performance of the employment contract or if continued performance of the employment contract has become impossible**, the Employer shall pay damages pursuant to Article 87 hereof.

LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS (Article 87)

If an Employer terminates or ends an employment contract in violation of this Law, it shall pay damages to the Employee at twice the rate of the severance pay provided for in Article 47 hereof.

Others: Fair Employment Liability

LAW OF THE PEOPLE’S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS (Article 8)

When an Employer hires an Employee, it shall truthfully inform him as to the content of the work, the working conditions, the place of work, occupational hazards, production safety conditions, labor compensation and other matters which the Employee requests to be informed about. The Employer has the right to **learn from the Employee basic information which directly relates to the employment contract, and the Employee shall truthfully provide the same.**

LAW OF THE PEOPLE’S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS (Article 25)

An employment contract shall be **invalid or partially invalid** if:

- (1) A party uses such means as deception or coercion, or takes advantage of the other party’s difficulties, to cause the other party to conclude an employment contract, or to make an amendment thereto, that is contrary to that party’s true intent.

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 during the probation period not to satisfy the conditions for employment.

No discrimination against: Gender, Nationality, Race, Religious belief, Persons with disabilities, Migrant workers, Non-active viral carriers of communicable diseases

The Company should not know	The Company need not know	The Company shall know	The Company can know	The Employee should actively inform
<ul style="list-style-type: none">• Marital and childbearing status of women• Hepatitis B carriers• Experience of COVID-19 infection	<ul style="list-style-type: none">• Personal preferences and inclinations• Personal credit reporting• Personal ethnicity• Religious belief• Physiological characteristics	<ul style="list-style-type: none">• Age (interval) of personnel• Employment taboos• Employment qualifications• Repeated employment relationship• Non-competition obligation	<ul style="list-style-type: none">• Personal educational background• Work related experience• Ethnic background• Conflict of interest matters• Other mandatory information	<ul style="list-style-type: none">• Name• Basic identity information• Contact address and methods• Experience of criminal punishment

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Reference List

1. [China Briefing from Dezan Shira and Associates](#)
2. [Worldometer](#)
3. [The World Bank](#)

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



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