

Legislative trends and the PRC Employment Contract Law

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The big picture

- More protection for individual employees
- Employers must consult with all staff
- China world leader in union penetration
- Collective bargaining
- The “Three Supremes” – return to the cultural revolution?

Employment Contract Law

What's actually in the
implementing regulations?

Open-term contracts

- “One shot” interpretation seems confirmed
- Implied terms if no agreement can be reached

Recognition of prior service years

- If employee transfer “not attributable to employee”, new employer must recognize prior service years
- Still no automatic transfer of employment
- But buyer may be liable for unfunded pension liabilities
- Employees may enjoy more job protection

Multiple employment locations

- Labor standards follow place of actual performance
- Higher standards in employer's location only if parties agree
- Branch offices can be employers and sign employment contracts

No written employment contracts

- Within one month – employer can terminate at will without severance
- One month to one year:
 - Double wages
 - Employer can terminate at will but severance must be paid
- One year – deemed to sign open-term contract
 - Implied terms
 - Cannot terminate except for statutory reason

Training contracts

- No clarification on “special” funding and “professional/technical” training – may affect validity of bond
- If enforceable, only certain training costs are recoverable
- Net effect: training bonds of limited use for employers

Penalties for using secondment

- Host company can now be fined for illegal use
- RMB1,000 - 5,000 for each employee
- De facto employment risk?
- Equal pay for equal work

Issues not answered
by
ECL implementing regulations

Employee consultation

- No final answer on whether union/employee rep consent is required
- No clarification on how “employee representatives” are elected
- No clarification on whether old company rules are grandfathered
- No clarification of “major matters”

Employee secondment

- No clarification on “temporary”, “substitute”, and “auxiliary”
- Does the Employment Contract Law apply to rep offices?
- Question whether restrictions will be seriously enforced

Recent developments on Labor Unions

Current state of play

- Campaign goal in June: unionize 80% of Fortune 500 companies by 30 September 2008
- New goal: 90% in 2008, 100% in 2009
- Smaller companies also targeted

Unionization Survey

Baker & McKenzie survey of 83 large companies in mixed industries:

- 70 have unions
- 8 in progress of establishing unions
- 5 no unions

Union powers

- Union must be consulted on:
 - Company policies (on comp, wage and hours, and benefits)
 - Other “material employee-related matters”
 - Restructuring or any “important operational issues”
- Union must be notified prior to any dismissal
- Unions do not have right to organize strikes, but wildcat strikes are accepted; unions must mediate
- Enterprise must pay 2% of company payroll

Collective bargaining

- ACFTU's next policy goal – promote collective bargaining in all companies
- Generally, done at the company-level
- No requirement to initiate collective bargaining
- Generally, cannot refuse collective bargaining once requested by company union

Collective bargaining cont.

- If no agreement can be reached:
 - Labor bureau can be called in to mediate
 - But cannot impose terms
- Final version must be voted on by all employees or ERC
- Must be approved by local labor bureau
- Collective contract sets minimum framework for all individual employment contracts



Questions?

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