

China's Labor Contract Law

Its Impacts and Outlook

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- ❖ **I. Introduction of the LCL**

- ❖ **II. Implementation and Impacts of the Law since Passage**

- ❖ **III. Outlook**



I. Introduction of Labor Contract Law

- ❁ Adopted in June 2007, and went into effect on January 1, 2008**
- ❁ Implementation Rules promulgated in September 2008**
- ❁ Against a backdrop of widespread labor abuse**
- ❁ Intended to protect employees' rights and interests**



Introduction (cont.)

Main components:

- **Requirement of written employment contract**
- **Termination for statutory reasons only**
- **Requirement of severance payment in most cases**



Introduction (cont.)

- ❄ **Requirement of written employment agreement**
 - **Must sign within one month;**
 - **Penalties for failure to sign;**
 - **What if employee refuses to sign:**

- ❄ **Fixed-term vs. open-term**
 - **Certain employees are entitled to open-term contracts;**
 - **First two can be fixed-term, third one must be open-term;**
 - **Can you terminate an employee with an open-term contract?**



Introduction (cont.)

Termination (by employer):

- For statutory reasons only (with one exception, sort of);
- Cannot terminate without cause;
- Must follow prescribed procedures;
- Massive layoffs require approval;
- Severe penalty for wrongful termination;



Introduction (cont.)

Severance payment

- **One month for each year of employment**
- **Payable in most terminations**
 - **Exceptions include:**
 - **“material breach of rules and regulations”**
 - **“serious dereliction of duty”**
- **Cap for employees with high salaries**



Introduction (cont.)

Importance of employee manual

- **provides basis for termination for poor performance and incompetence**
- **Offers one of few exceptions to severance payment**
- **Evidential value**



Introduction (cont.)

Others important features:

- Private cause of action against employers
- Strengthened powers of labor unions
 - Collective employment contract
 - Massive layoff
 - Approval of rules and regulations



Introduction (cont.)

Others Provisions:

- Noncompetition
 - Limited to senior management, senior technicians, & individuals with confidentiality obligations
 - Entitled to payment during noncompete period
 - Limited to 2 years
- Restrictions on probation
 - Must be part of employment, cannot stand alone
 - Limited to 1 to 6 months depending length of employment
 - Higher of min. pay or 80% of contract pay
- Record keeping:
 - Employee roster;
 - Copies of all employment contracts must be kept for 2 years after termination



II. Implementation and Impacts

- ❖ **Protection of employees' interests and welfare**
- ❖ **Implementation and enforcement**
- ❖ **Impact on labor costs**
- ❖ **New challenges under current economic conditions**



Impacts (cont.)

Protection of employees' interests:

- Employees are more aware of their rights
- More willing to pursue them – as reflected in increased labor dispute cases:
 - Government: 693,000 labor dispute cases filed in 2008, up 98% from 2007;
 - China Daily (state-run newspaper): 98,568 labor cases filed in Q1 of 2009, up 59% over same period in 2008;
 - Cases filed with Guangzhou Arbitration Council from January to November 2008 doubled to 60,000*;
 - Cases in Beijing increased 104% to 33,000 in the first 9 months of the year*;
- Employees hurt in other ways:
 - More temp. employees - increased from 7 mil. to 27 mil. In 2008*
 - Increased fine for minor violation
 - Lost employments caused by factory closings (Chinese Academy of Social Sciences: 12m job losses in 2008)

* Numbers reported by the Fair Labor Association in Global Action in March 2009.



Impacts (cont.)

Implementation:

- Government: 1.1mil collective labor contracts in first half of '08, up 12% over same period in '07
- Government: 90-96% of employees signed contracts
- Geographical differences
 - Guangdong: relaxed enforcement intended to save fledging manufacturing industry
 - Shanghai: different treatment of Chinese employees and foreign employees



Impacts (cont.)

- ❀ Impact on labor costs:
 - Chinese-owned vs. foreign-owned companies
 - Large vs. small companies
 - Cost increase ranges from 2% to 20%; most see it between 10% to 20%
 - Increased business closings in 2008:
 - LCL or the economy?



New Challenges (cont.)

- ❊ **Many competing interests:**
 - **Employees' welfare**
 - **Interests of businesses**
 - **Social stability/job creation**
- ❊ **Specific challenges:**
 - **Certain types of employees cannot be terminated, even during economic hardship, under the LCL**
 - **Wage reduction**
 - **Employers' inability to pay hinders enforcement;**



III. Outlook

Will the law be changed?

- Not going away
- LCL seen as having positive effective in current situation
- More clarifying regulations will come out
- Potential local relaxation on enforcement

Are companies leaving China?

- Yes and no

How can it affect you?

- If you are establishing a presence in China;
- If you are sourcing from China;
- If you are investing in or buying a Chinese company;



Outlook (cont.)

What should you do?

- Have a contract, in Chinese;
- That complies with LCL;
- Consider hiring for specific projects when possible;
- Consider contract term carefully
- Have a detailed employee manual in Chinese (before hiring) – even just a few employees;
- Put in place a system to follow through on signing employment contracts with new hires;
- Maintain good records;



What's with the Bulldog?

- ❖ Intelligent
- ❖ Protective
- ❖ Tenacious
- ❖ Loyal



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