

## Labour/employment law data for China

<b>1.</b>	<b>Is it a legal requirement that employees must receive an employment contract ?</b>	The employment contract will be recognized as Fixed Term Contract, Open-ended Contract, and Contract to be Terminated upon Completion of Certain Work. A written employment contract shall be concluded when establishing an employment relationship concerning above contracts. In general, a written contract must be signed within 1 month after employees start work. Oral contracts are ONLY permitted in case of part-time workers
<b>2.</b>	<b>What factors constitute a fair dismissal i.e. legally justifiable reasons to terminate employment without the need to pay compensation?</b>	A fair dismissal can be relied by the employer if the employee, a) fails to meet the requirements for employment during the probation period; b) materially breaches the employer's rules and regulations; c) causes substantial losses to the employer due to his serious dereliction of duty or engagement in graft for personal gain.
<b>3.</b>	<b>What is good practice with regard to dismissal procedures to minimise the risk of claims for unfair dismissal?</b>	If an employer is to terminate an employment contract unilaterally, it shall first inform the trade union of the reasons. There is advisable to have a comprehensive settlement agreement between the parties stipulates compensation to prevent the employee raises any other claim after that. With regard to the employee who may have access to the company chop and business license and other confidential information of the company, make sure those documents are well kept before his dismissal.
<b>4.</b>	<b>If an employee is dismissed unfairly what is the financial range of compensation that can be made to employees?</b>	Financial compensation shall be paid based upon the number of years the employee has worked for the employer at the rate of 1 month's wages for each full year. Any period not less than 6 months but less than one year shall be counted as 1 year. The financial compensation payable to a worker for any period of less than 6 months shall be 1/2 of his monthly wage. If the monthly wage of a worker is three times greater than the average monthly wage in the previous year for employees as announced by the People's government at the municipal level directly under the central government or at the city-with-district level

		where the employer is located, the rate for financial compensation paid to him shall be 3 times the average monthly wage of employees and shall be for not more than 12 years of work.
5.	<b>Do employees have the right to be members of a trade union?</b>	Yes, an employee is free to join a trade union or not to join as he chooses. The membership dues would be 0.5% of his income.
6.	<b>Is there any legal requirement for an employer to contribute to a pension for employees?</b>	The employer is obliged to pay the social insurance premium for the employee in accordance with the law.
7.	<b>What are standard maternity rights?</b>	According to the Labour Law, a pregnant woman is entitled to 90 days maternity leave and local labour regulations in many cities provide additional 30 days leave for pregnant woman over 24 years old who gives her first birth. The woman's salary shall be fully paid during her maternity leave by social insurance and the employer. The employer shall not terminate pregnant woman unless she fails to meet recruitment requirements within probation period, bring severe loss to the employer due to her dereliction or seeking personal benefits, or materially violate internal bylaws, establish employment relationship with other employers within labour terms or has criminal liability pursued.
8.	<b>What are parental leave rights (including paternity leave)?</b>	There is no national laws providing parental leave yet though local labour regulations in some cities do set forth paternity leave ranging from 3 days to 7 days for father when his spouse is over 24 years old.
9.	<b>When are employees eligible for redundancy payments?</b>	If the employer encounters serious operation difficulty, restructure or major change in economic environment, it could make "economic retrenchment" and pay redundancy payment to the retrenched employees. The employer shall go through strict process to make retrenchment under such circumstance, including holding the staff conference, consulting the unions and reporting to local labour authorities.
10.	<b>What are the statutory redundancy payment limits?</b>	The redundancy payment shall be calculated on the basis of the service length of the employee, basically one month salary

		for one year service. The monthly salary shall be capped by three times local average salary and the service years shall also be capped by 12 years if the salary is already capped.
<b>11.</b>	<b>Can existing employees be dismissed if you buy a business with employees?</b>	No. Art.33 and Art.34 of the Labor Contract Law expressly provide that the change of the enterprise name, the legal representative, the shareholder shall not prejudice the performance of the labor contract and that the transferee of the business is obliged to perform the contract after the merge or division.
<b>12.</b>	<b>Any other general legislation?</b>	Working hour system, paid vacation regulation, labour arbitration, pay roll system, etc.