



China Employment Law ALERT

Compliance Series

At the request of many of our multinational clients, we will be issuing a series of Alerts focused on China-specific employment compliance tips. The first tip is on termination, an important and unavoidable topic.

Compliance Tip #1: Termination

Employers in China should be aware that “termination at will” does not apply in China. Unlike in some other jurisdictions, such as the United States, employers cannot unilaterally terminate an employee without a statutory cause. The applicable PRC employment laws and regulations set out several legitimate causes for unilateral termination by an employer. Examples of such causes are:

- employee misconduct,
- employee job incompetence, and
- redundancy.

For each cause, the employer must fulfill and follow specific requirements and procedures in accordance with law and maintain evidence of compliance.

When a dispute of wrongful termination arises, the burden of proof is generally on the employer. Depending on the termination cause(s), economic compensation may be payable to the employee. Additionally, a 30-day prior written notice may also be required in certain circumstances, otherwise additional compensation in lieu of the prior notice is payable by the employer. Penalty for an established wrongful termination includes reinstatement of the employment relationship or additional economic compensation to the employee.

Similar to employers, employees in China are not free to terminate employment at any time either. Unless under extreme circumstances (such as severe incompliance and/or violation of law by the employer), an employee must notify his/her employer 30 days in advance (during probation period, three days). Economic compensation is not available to an employee who resigns.

Alternatively, the employer can negotiate with the employee (or vice versa) to reach a mutual separation agreement. Mutual separation provides for much more flexibility to both the employer and the employee, and is relatively less prone to wrongful termination claims. Economic compensation is negotiable for most mutual separation cases. In the interest of efficiency and risk control, mutual separation is the most recommended approach for both parties.

By: [Wan Li](#), Partner / Shanghai / lw@seyfarth.com

If you would like to learn more about the Compliance Tip or have any questions, please contact Wan Li, or:

United States: *Darren Gardner* at dgardner@seyfarth.com, *Dominic Hodson* at dhodson@seyfarth.com or *Marjorie Culver* at mculver@seyfarth.com

UK/Europe: *Pete Talibart* at ptalibart@seyfarth.com or *Ming Henderson* at mihenderson@seyfarth.com

Australia: *Luke Edwards* at laedwards@seyfarth.com

www.seyfarth.com



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