



China Employment Law ALERT

Employers Prepare for Compulsory Collective Bargaining

Labor Strikes – An Upward Trend

The number of labor strikes in China is up by nearly a third from last year, Reuters has reported. Recent strikes at Walmart, IBM and Samsung SDI have now been followed by a large-scale strike, affecting thousands of employees, at the world's largest sneaker manufacturer, Yue Yuen Industrial (Holdings) Limited. The strike reportedly stems from the company's alleged failure to sign employment contracts and to pay social insurance contributions in full.

There is currently no legislation in China regulating labor strikes. The Chinese government is naturally inclined towards avoiding workforce disputes in the interests of social stability. The upwards trend in labor strikes has given a new impetus to previous efforts to put in place a collective employment contract regime, with the hope that requiring collective bargaining on issues such as salary, social insurance and benefits will reduce the prospect of employment disputes (especially strikes) in the future.

Collective Contracts – What Are They?

The key feature of a collective contract is that it is negotiated between the employer and its trade union or other employee representatives, rather than directly with individual employees. The collective contract can provide minimum employee protections in areas such as salary, working hours, rest and leave, work safety and other employment conditions. The collective contract regime may also include negotiation over financial terms and benefits to produce what is known as a salary collective contract.

The following features differentiate a collective contract from that of an employment contract with an individual employee ("Individual Contract"). A collective contract:

- is finalized through a negotiation between the employer and its trade union or representatives of employees;
- focuses on the employer's, rather than the employee's, obligations;
- is negotiated and implemented following specific procedures and must be filed with the local authority;
- is binding on the employer and all its employees; and
- supersedes any Individual Contract – once a collective contract is finalized, its terms on salary, leave or benefits will "trump" those in any Individual Contract.

Collective Contracts – Where Are We Now?

The current concepts for collective contracts have existed since 2008. In 2010, the Ministry of Human Resources and Social Security (“MHRSS”) started promoting collective contracts under the “Rainbow Program” banner. This did not have a significant impact. This year, we are seeing a new focus on the development of collective contracts from both the central and local governments with a view to reducing the prospect of employment disputes (especially strikes) in the future.

We are already seeing real impacts from this new focus. On April 14, 2014, the MHRSS released a Notice that, by the end of 2015, the collective contract regime must cover 80% of the employers in China; and state-owned companies and *Fortune* 500 companies are expected to put collective contracts in place. This initiative is known as the “Breakthrough Program.” While the Notice does not have a direct effect on employers, our expectation is that it will accelerate the trend towards compulsory rules in all provinces.

This March, two cities in Zhejiang Province, Hangzhou and Ningbo, passed regulations requiring local employers to conduct collective salary negotiations, or risk financial sanctions. For example, the Ordinance on Salary Collective Negotiation of Hangzhou provides that any employer who refuses to finalize a salary collective contract is subject to a fine up to RMB 30,000. Additionally, the legal representative or the responsible person of the employer is subject to a fine of up to RMB 5,000. Guangdong has now begun drafting similar regulations. The Beijing Federation of Trade Unions, a governmental agency, has stated that its expectation is that all *Fortune* 500 companies in Beijing will establish collective contracts by the end of 2014, anticipating more widespread regulation.

What Does This Mean For Employers?

Given the Breakthrough Program has government backing and we expect other places like Beijing and Guangdong to follow through with local rules in the near future, we recommend that employers who have not already put in place collective bargaining should start to prepare their strategy for any such demand now.

U.S. employers operating in a unionized environment will be familiar with the strategies and tactics of workplace negotiation. We anticipate the Chinese model for workplace negotiations will continue to have clear differences, to reflect local culture and negotiation styles.

We will be closely monitoring the development of the new laws and market practice in order to advise clients.

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