

A photograph of a business meeting in a modern office with large windows. The scene is backlit by a bright sun, creating silhouettes of several people. Two women are seated on the left, looking towards the center. A woman stands in the middle, holding papers. A man stands next to her, also holding papers. On the right, another man stands, gesturing with his hands. The sun is low on the horizon, creating a warm, golden glow. The silhouettes are reflected on the polished floor.

**Global Employment  
Compass  
China**

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# 1. Summary of applicable rights for different categories of workers

	Employees (part-time or full-time)	Independent contractors/ service providers	Volunteers
<b>Employment laws and regulations</b>	Yes	No*	No**
<b>Employees' compensation/ remuneration requirements</b>	See <a href="#">below</a>	See <a href="#">below</a>	See <a href="#">below</a>
<b>Minimum wage requirements</b>	Yes	No*	No**
<b>Mandatory provident fund/retirement benefit fund contributions</b>	Yes	No*	No**
<b>Immigration requirements including the right to work in your country</b>	Yes	No***	No
<b>Personal Data (Privacy) laws and regulations</b>	Yes	Yes	Yes
<b>Anti-discrimination laws and regulations</b>	Yes	No*	No**

\* assumes a genuine independent contractor/service provider arrangement and the individual not being deemed to be an employee

\*\* assumes a genuinely voluntary arrangement and the individual not being deemed to be an employee

\*\*\* Foreign nationals cannot work in the PRC as independent contractors/consultants.



## 2. Legal requirements/rights/ practices for different categories of workers

### a. Employees

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#### *Definition of an employee*

There is no specific definition of “employee” under PRC law. From a legal perspective, an employee is generally interpreted as “an individual who (i) has working ability, (2) is of statutory employment age (i.e. 16 and above), and (3) works for and under the management of an employer and receives remuneration in return in accordance with a contract of employment”.

### 1 Contracts of Employment

#### **What types of employment contracts are available? E.g. fixed term, part time, zero hour contracts, other? Are there any specific employment contracts available for non-profit organizations?**

Full-time contracts (including fixed-term and non-fixed-term contracts) and part-time contracts are available, however zero hour contracts are not permitted.

Some contracts are not subject to PRC employment laws, but a company should be careful because it is possible that the individual might claim there is a de-facto employment relationship. Such contracts include: 1) a contract for a second job; 2) hiring of an independent consultant.

There are no specific employment contracts available for non-profit organizations. The abovementioned general full-time and part-time contracts can be adopted by a non-profit organization based on its actual situation.

#### **What are the key terms of employment contracts?**

According to the *PRC Employment Contract Law*, a full-time employment contract must specify:

- the employer's name, domicile, legal representative or main person in charge;
- the employee's name, domicile, resident ID card number or other valid identity





- document number;
- duration of the employment contract;
- job description and place of work;
- working hours, rest and leave entitlements;
- remuneration;
- social insurance; and
- labor protection, working conditions and protection against occupational hazards.

From a practical perspective:

- a. Junior employment contracts also typically include the following terms which can be agreed between employer and employee:
  - probation period;
  - training; and
  - confidentiality.
- b. Senior executive contracts are generally more detailed than contracts for junior employees. The contract may include supplementary insurance and details of other benefits than those mandated by law. Employers can include restrictive covenants in the employment contracts of senior managers, and employees who have access to the employer's trade secrets can be required to agree to confidentiality and non-compete obligations in their employment contracts (although payment needs to be made to the employee for the covenant of non-compete to be enforceable).

Please note that PRC labor laws provide the same protection to senior executives as junior staff in terms of contract termination. For example, it is unlikely that an employer can enforce a notice period of more than 30 days with a senior executive even if it is agreed in the employment contract.

**Is it acceptable to have a probation period for employees? If yes, for how long?**

Yes, a probationary period is allowed for fixed-term contracts with a term of more than 3 months and for all non-fixed term contracts. The duration of the probationary period ranges from one month to a maximum of 6 months depending on the contract term. The probationary period should be included in the employment contract terms. An employee can only have one probationary period with an employer.

**Are fixed term employment contracts permissible? Are there any limitations on fixed term contracts? Are there any requirements to have a fixed term contract?**

Fixed-term contracts are permissible. Fixed-term contracts are not subject to particular conditions/justifications, except that when an employer has entered into two consecutive fixed-term employment contracts with the employee, generally speaking, the employer must agree to renew on the basis of a permanent employment contract if the employee requests so (this relates to the third 'renewal'). There are no particular formalities for a fixed-term contract and there is no maximum duration.





**Do employment contracts have to be in writing? Are there any signatory requirements for employment contracts? For example, could they be signed in-person or electronically, etc.)?**

Written employment contracts are mandatory for full-time employees. Verbal agreements are sufficient to meet legal requirements for part-time employees, but a written contract is recommended as best practice.

Usually, employment contracts are written in Chinese. In cases of contracts for expatriates it may be accompanied with an English translation. If the employment contract is written in both Chinese and a foreign language, the Chinese version shall prevail.

A written employment contract shall take effect upon signature or stamping by both the employer and employee. Under PRC law, an electronic signature can only be considered reliable if certain conditions/standards are satisfied. In practice, an electronic signature created and certified by a qualified electronic certification service provider which has obtained an Electronic Certification Service License issued by the PRC Ministry of Industry and Information Technology is more likely to be considered a reliable electronic signature. Most of the providers with such license are Chinese companies. Having said that, it is always good practice and highly recommended to execute an employment contract in wet ink signatures.

**Do employees have to be issued with a written employment contract before they start work?**

An employer shall enter into a written employment contract with its full-time employees at least no later than one month after the commencement of the employee's work. If the employer fails to do so, the employer is obliged to pay double salary from the day immediately following that one month until the day immediately preceding the date on which a written employment contract is entered into. The maximum period for double salary is 11 months.

From a practical perspective, it is good practice for employers to enter into a written employment contract with its full-time employees on the employees' onboard date.

**Can you provide a simple template of the contracts mentioned above?**

N/A. There is no universal template in the PRC. The contract should be prepared based on the particular circumstances of the appointment.

**Is there an obligation for an employer to run a criminal record check to the extent that any individual they hire will be working with children or vulnerable people?**

There is no such obligation, unless the individual is employed to undertake special roles as prescribed by PRC law. These roles include (but are not limited to) accountant, teacher, journalist, security guard, senior executives, etc.

**Can employers request references from former employers for new hires?**

Yes, employers can request references from former employers for new hires.

**Is an employer required to set up any form of employee representative body? If so, what is the trigger for this?**

Employers do not have to form collective employee representative bodies. The All-China Federation of Trade Unions ("ACFTU") and its subsidiaries is the only lawful trade union organization and is a semi-official Government department. The majority of employees within China are members of the





union, and trade union activities are governed by the Trade Union Law of the People's Republic of China.

The fundamental duty of the union is to safeguard the legal rights and interests of employees. It is responsible for harmonizing labor relations and safeguarding the labor rights and interests of employees through consultation with employers and the conclusion of collective agreements.

There is a regulation jointly issued by ACFTU with other relevant Chinese authorities which promotes "democratic management in enterprises" by way of convening employee representative congresses. However, this regulation has not been strictly enforced in practice.

**Is it common to have collective agreements in your jurisdiction that apply to all employers in a particular region or sector?**

Collective agreements with trade unions are not widespread. Most collective agreements are negotiated at company level between management and employees, although the government is encouraging more collective bargaining at regional or industry-wide level. Collective agreements set the minimum standards for individual employment contracts.

Under applicable laws, collective bargaining agreements can cover competing employers in the same industrial sector located in the same district. When considering restructuring, an employer must consult the union if the company has one.

## 2 Conditions of employment

**What is the minimum age requirement for employment?**

Employers (other than institutions of literature and art, physical culture, and special arts and crafts) are prohibited from employing or engaging any individual who is under the age of 16.

For employees who are 16 years old or above but under 18 years old, employers shall not assign to them any work or dangerous operation that will endanger their physical and mental health, and are overly-strenuous, poisonous or harmful, etc.

**What type of work may a child undertake? For example, are there any specific restrictions?**

Subject to the relevant government approval, a child under the age of 16 may be employed by institutions of literature and art, physical culture, or special arts and crafts to undertake certain work (e.g. attending arts or sports trainings, being an apprentice of certain crafts).

See answer to previous question above for additional restrictions on employees aged 16 – 18.

### Wages

**What is the minimum wage requirement for employees? Are there any exceptions in minimum wages for young persons or people with disabilities?**

Minimum wage varies in different municipal areas and is subject to adjustment every year. The minimum wage applies to all employees regardless of age or experience.

For example, the local minimum wage in Beijing will be adjusted to RMB 2,420 per month from 1 September 2023. In Shanghai, the local minimum wage at the time of drafting is RMB2,690 per month.

**Are there any conditions which warrant a pay raise or extra pay? If yes, what are they?**





There are no statutory requirements in this regard under PRC law.

**When are wages due? For example, is there any obligation to pay wages weekly, or monthly?**

For full-time employees, wages must be paid at least once per month; if the employer implements a weekly, daily or hourly wage payment system, wages may also be paid on a weekly, daily or hourly basis. From a practical perspective, it is common for employers to adopt a monthly payment cycle.

For part-time employees, the wage payment cycle shall be no longer than 15 days.

**Are employers obliged to provide employees with paid leave on public holidays?**

There are a total of 11 statutory public holidays per annum in China. Employees are entitled to normal salary during such holidays. Employers can arrange for employees to work on statutory public holidays due to business needs, and employees are entitled to 300% of their normal salary as overtime pay. Generally speaking, this leave entitlement does not apply to part time employees.

**Are employers obliged to provide employees with annual leave?**

After 1 years' service (with both previous and current employers), an employee is entitled to statutory annual leave as follows (in addition to 11 days' public holiday):

- between 1 and 10 years' service – 5 days;
- between 10 and 20 years' service – 10 days; and
- 20 or more years' service – 15 days.

This leave entitlement does not apply to part time employees.

**Are employees entitled to receive their usual salary during their annual leave?**

Yes, employees are entitled to normal salary during their annual leave.

**Is there a requirement to pay overtime? How is overtime compensated?**

Yes, employers may, subject to negotiations with individual employee and trade union, arrange for full-time employees to work overtime due to business needs, which shall generally not exceed 3 hours per day and 36 hours per month.

Full-time employees who are under the standard working hours (i.e. 8 hours per day and 40 hours per week) are entitled to overtime pay or time off in lieu as follows:

- a. 150% of normal salary, if the overtime is carried out on working days;
- b. 200% of normal salary, if the overtime is carried out on rest days (e.g. weekends) and no time off in lieu of equal time can be provided; or
- c. 300% of normal salary, if the overtime is carried out on statutory public holidays.

**Are there any extraordinary circumstances that could be relied on to temporarily cease paying employees for the hours worked?**

Subject to local regulations (e.g. Shanghai), the performance of a full-time employment contract may be suspended under certain circumstances (e.g. where the employee joins the arms or







performs other mandatory obligations as provided by national law or in other circumstances prescribed by law or where agreed by both the employer and employee). In such cases, the employer is not obliged to pay salary to the employee. Having said that, the employer is still required to pay mandatory social insurance and housing fund contributions for the employee during the suspension period.

### **Are employees entitled to an end-of-year payment?**

There is no statutory requirement in this regard. An employer may, at its sole discretion, offer employees an end-of year payment (e.g. the 13th monthly salary).

### **Are employees entitled to payments when their employment contract is terminated, such as notice or notice pay, accrued or untaken holiday and/or statutory severance?**

#### *Notice Period or Notice Pay:*

- *For Employers:* There is no concept of termination at will under PRC labor laws. All termination must be established on statutory grounds. Depending on the employee's default or incapability, either (i) immediate termination or (ii) termination by serving a 30 day prior notice (or one month's salary in lieu of notice), are both possible.
- *For Employees:* If an employee intends to terminate their employment contract through voluntary resignation, the employee must provide the employer with a 3 days' prior notice (during their probationary period), or 30 days' prior notice (after their probationary period has ended). However, even if the employees are required by their contracts to give longer notice than these minimum notice periods, such requirement will not be enforceable under Chinese labor laws.

#### *Unused Annual Leave:*

- Employees are entitled to compensation for any accrued but unused annual leave where their employment contract is terminated for whatever reason, which shall be calculated based on the following formula:
- The Average Monthly Salary / 21.75 x Number of Unused Annual Leave x 200%
- "Average Monthly Salary" is calculated by adding together the employee's total income (including base salary, bonuses, subsidies, allowances and commission where applicable) for the immediate 12 months' period prior to the termination date and dividing such figure by 12.
- "Number of Unused Annual Leave" = (number of calendar days in the relevant year which has elapsed as of the Termination Date/365) x total annual leave entitlement – annual leave used as of the termination date.
- This payment entitlement does not apply to part time employees.

#### *Severance Pay:*

- Statutory severance pay is payable where an employee's employment contract is terminated for certain statutory grounds. Please see [above](#).

### **Working hours**

**What is considered a full time working week? If the employee is contractually required to work less than this amount are they considered a part time employee?**





Under PRC law, part-time employment is a flexible labor-using arrangement, under which part-time employees are paid based on the hours they actually work and either the employer or the employee may unilaterally terminate the employment at any time by giving the other party a notice without any compensation. An employee can enter into a part-time employment contract with multiple employers simultaneously. A part-time employee's average daily working hours shall generally NOT exceed 4 hours and their accumulated weekly working hours shall not exceed 24 hours, for one employer. In other words, where an employee's working hours exceed these caps, there is a risk that they may be deemed as a full-time employee.

On this basis, a full-time working week refers to the week within which an employee works more than 24 hours for an employer. An employee will not be deemed as a part-time employee unless all the conditions (e.g. working hours, unit for salary calculation, payment cycle, etc.) for part-time employment are satisfied concurrently.

**Are there fixed public/statutory holidays each year? Can employees be required to work on public/statutory holidays? Are employees entitled to any other type of leave besides public/statutory holidays?**

Please see [above](#). Employers can arrange for employees to work on statutory public holidays due to business needs, and employees are entitled to 300% of their normal salary as overtime pay.

Employees are entitled to the following types of leave besides statutory public holidays (although note that these do not apply to part time employees):

- a. Maternity leave:** The minimum maternity leave entitlement under PRC national law is 98 days (usually 15 days before childbirth) and can be extended in cases of complicated births or multiple births. Please note that the extended maternity leave varies in different municipal areas in China.
- b. Paternity leave:** Paternity leave is available in most localities ranging from seven days up to one month. In certain localities (e.g. Beijing), there are local regulations that allow for the adjustment of extended maternity leave and paternity leave allocation, provided that both employers of a couple agree to it - if the mother voluntarily chooses to reduce her extended maternity leave, the father is then entitled to the corresponding number of days of additional paternity leave.
- c. Parental leave:** Parents (i.e. both female and male employees) who give birth (or in case of a male employee whose partner gives birth) in accordance with the national family planning policy are entitled to 5-15 working days fully paid parental leave per year before their child reaches the age of 3. (**NB:** The "year" herein refers to the anniversary of their child's birth, e.g. if the child was born on 1 December 2022, the period from 1 December 2022 to 30 November 2023 shall be counted as one year).

In accordance with the relevant local regulations (e.g. in Guangxi, Anhui, Hainan and Yunnan Provinces), the parental leave rules can also be applied in the case of lawful adoption.

- d.** Breastfeeding mothers are entitled to paid leave of one hour per day while in a nursing period (ending when the child is 1 year old).

**Do part time employees receive any particular protection on the basis of their part-time status?**





There is no particular protection available to part-time employees on the basis of their part-time status. A part-time employment contract can be entered into verbally and employers may unilaterally terminate a part-time employee's employment at any time without providing any prior notice or severance pay.

**Do part-time employees receive the same pro-rated terms to full time employees, e.g. in relation to pay and benefits?**

Salaries of part-time employees are calculated and paid based on the hours they actually worked. There are no statutory benefits applicable to part-time employees.

**Social security**

**What social security contributions are employers obliged to pay? Presumably, pro-rated contributions are required for part time employees?**

Full-time employees: Employers must pay mandatory social insurance contributions (including basic pension insurance, basic medical insurance, unemployment insurance, work-related injury insurance and maternity insurance) for all their full-time employees in accordance with statutory rates and contribution basis.

Part-time employees: Employers must pay work-related injury insurance for their part-time employees in accordance with statutory rates and contribution basis.

**Are employers obliged to provide health insurance to their employees?**

Providing commercial health insurance is not mandatory.

**Are employees entitled to unemployment insurance/benefits following the end of employment?**

Yes, employees might be able to claim unemployment benefits following the end of their employment.

**Are employers obliged to provide sick leave? If yes, for how long? How many days have to be paid by employers? Is it possible to have unpaid sick leave?**

Yes, employers are obliged to provide sick leave to their employees. There is a statutory medical treatment period under PRC law for the treatment of non-work-related injuries or illness (i.e. employees may take sick leave during this period) which ranges from 3 to 24 months depending on the employee's length of service. The sick pay entitlement is subject to company policy and local policy. In Shanghai, the salary during a medical treatment period is based on a certain percentage of the employee's normal salary (depending on the length of service), whilst in Beijing it is only required that the employee's minimum pay during this period must be at least 80% of the local minimum wage. Most employers grant the employee a higher level of pay during the medical treatment period.

Subject to local regulations, employers may grant unpaid sick leave to employees at their sole discretion after the statutory medical treatment period expires.

Sick leave entitlement and sick leave pay do not apply to part time employees.

**Are employers obliged to provide maternity leave for employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid maternity leave?**





Please see [above](#) for the duration of maternity leave.

Female employees may apply for maternity leave entitlements (including childbirth living allowance and childbirth medical subsidy) in a lump sum from the government during the maternity leave.

Specifically in terms of the childbirth living allowance, it is calculated in accordance with the following formula: *Employer AMS / 30 x number of days of Maternity Leave*.

“**Employer AMS**” refers to the average monthly salary of all employees of the employer for the preceding calendar year. The exact figure of the Employer AMS shall be reported by the employer to the local social insurance bureau in May or June of the current year. Employer AMS shall be capped at 3 times the average monthly salary of employees in the locality where the employer is located for preceding year (“**Local AMS**”) but shall not be less than 60% of the Local AMS.

If the childbirth living allowance received by the employee from the government is lower than (a) her normal salary before the childbirth, or (b) the uncapped Employer AMS (whichever is higher), the employer is obliged to make up for the shortfall between the living allowance and the aforesaid figure (a) or (b).

To the contrary, if the childbirth living allowance received by the employee from the government is not lower than either of the above two figures, the employer is not required to pay any salary to the employee during the maternity leave.

**Is paternity leave available to employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid paternity leave?**

Yes, paternity leave is available to male employees. Please see [above](#) for the duration of paternity leave. Employers are obliged to pay normal salary to the employees during the paternity leave period. It is not possible to have unpaid paternity leave.

**Are employers liable for absence due to work-place injuries?**

If an employee has suffered a work-related illness or injury (which is usually fairly narrowly defined and subject to certification by the local work injury appraisal committee under the local labor bureau), the employee can take leave during the Period of Work Suspension with Pay, as diagnosed by doctors and/or determined by the local work injury appraisal committee based on the severity of the injury. Generally, the maximum period of treatment and fully paid leave is one year. Note that in the case of work-related illness or injury, the employer is obliged to pay the employee pre-injury normal pay during the Period of Work Suspension with Pay. Subject to local rules, ‘pre-injury normal pay’ may refer to the employee’s average monthly income in the 12 months before the work-related injury occurred.

Subject to local regulations, these rules also apply to part time employees.

**Are employees entitled to retirement benefits from the employer? If yes, what benefits?**

If the employer only pays the PRC mandatory pension insurance for its employees, the employees are entitled to retirement benefits from the pension funds operated by the government, rather than from the employer, upon retirement.

Under PRC law, there is also a supplementary pension scheme (called the “Enterprise Annuity”), which is a voluntary contribution program under which both the employer and employee will pay additional pension insurance contributions to the employee’s personal account for Enterprise Annuity. In practice, only a limited number of companies (most are state-owned enterprises) have adopted the Enterprise Annuity. If the employer also implements the supplementary pension





scheme, the participating employees are entitled to receive additional pension entitlements through their personal account for Enterprise Annuity on a monthly basis, in instalments, or in a lump sum.

**Are employers obliged to introduce reporting channels and legal safeguards for whistleblowers?**

There is no statutory obligation in this regard under PRC law.

### 3 Safe and supportive work environment

**Broadly what measures have to be in place to ensure employers uphold health and safety? (such as fire or earthquake drills)**

Employers are responsible for ensuring the health and safety of their employees and those that are affected by their activities so far as reasonably practicable. The range of legal obligations placed on employers with respect to health and safety is extensive, with the particular obligations which apply in any given case depending on factors including the activities carried out by the company and the extent of the risks posed by those activities.

**Is there a requirement for an employer to issue any form of non-discrimination policies? (such as gender equality policies, equal employment opportunities, diversity, and inclusion policies, etc.)**

Employers are not generally required by law to issue any form of non-discrimination policies.

**Is there a requirement to provide employees with training designed to combat discrimination and harassment?**

There is no legal requirement to provide employees with training designed to combat discrimination.

However, according to the PRC law on Protection of Rights and Interest of Women, employers shall take necessary measures to prevent and avoid sexual harassment against female employees, including, among others, carrying out relevant training to employees.

**Is there a requirement to have a data protection policy?**

There is no statutory requirement to have a data protection policy, but it is highly recommended to have such policy in place.

**Is it mandatory for employers to have a Child Protection Policy (CPP)? Are employees obliged to provide training on CPP to its employees?**

It is not mandatory for employers to have a Child Protection Policy. Employers are not obliged to provide training on CPP to its employees.

### 4 Tax

**Which taxes are mandatory for employers to pay and deduct on behalf of their employees?**

Employers must, on behalf of their employees, withhold and deduct the individual income tax payable for all kinds of remuneration received by the employees.





**Are all employee taxes deducted from the salary that the employer pays or is there a requirement for employees to pay certain taxes directly?**

Generally speaking, all taxes payable by employees are deducted from the remuneration of the employees.

## 5 Remote work

**Are employers required to have a registered legal entity in the jurisdiction in order to employ employees in the jurisdiction?**

Yes, employers are required to do so.

**Are employers required to provide any form of physical working space for employees working in your country?**

Employees may work from the company location and/or from a remote location.

**Please provide general instructions for employers on what to check if the employer has remote employees, including concerning employee tax liabilities.**

There are no statutory requirements in this regard under PRC law. However, the employer should check whether an employee who is working remotely within the PRC is subject to additional taxes/tax reliefs on top of those which apply to employees working in the employer's place of work. That said, the general position is likely to be that no additional taxes or tax reliefs will be triggered.

In the event that employees are working remotely from another jurisdiction, an employer will need to assess the tax obligations that will arise in the country in which the employee is working. Whilst each jurisdiction will have different obligations in terms of the payment and deduction of taxes, the following factors are likely to be relevant: where is the employee living and working, does the employee split their time working in different jurisdictions? What nationality is the employee? Where do they have tax residence? Where is the company for which they are working based?

## 6 What to do when things go wrong

### Dispute resolution

**Do employees (including volunteers) need to go through any form of dispute resolution before bringing a claim to a court or tribunal?**

There is no statutory requirement in this regard under PRC law.

### Resignation

**What grounds do employees have for resignation?**

There are no legally specified grounds for resignation. An employee can voluntarily resign for any reason by giving the employer a 30 days' (or, if during the probation period, 3 days') prior notice.

An employee may unilaterally terminate the employment contract without giving any prior notice to the employer, if the employer fails to perform its obligations thereunder (e.g. failure to pay remuneration in a timely manner, failure to provide labor protection or working conditions as agreed in the employment contract, failure to pay social insurance contributions for the employee, etc.). Under such circumstances, employees are entitled to statutory severance pay.

### Termination





### **What grounds do employers have for the termination of employment contracts?**

It is not possible to terminate a contract without cause: employees can only be dismissed on limited statutory grounds. If an employer cannot point to a statutory ground, the termination is unlawful and the employee can demand reinstatement. If reinstatement is not possible or the employee does not want to be reinstated, the employee will be entitled to compensation equivalent to twice the statutory severance pay (which is subject to a capped amount) that the employee would have received for a lawful termination. Note that employees cannot be dismissed simply for cost-cutting reasons and a narrow definition of redundancy is used.

There are six statutory grounds under which an employee can be dismissed without notice and without statutory severance pay. These are where the employee:

- has not satisfied the conditions of employment during the probation period;
- has seriously violated the company's rules or regulations;
- has committed a serious dereliction of duty resulting in major losses for the company;
- is subject to criminal liabilities;
- has additionally established an employment relationship with another employer, which materially affects the completion of the employee's tasks with the original employer, or the employee refuses to rectify the matter after it has been brought to the employee's attention by the original employer; and
- uses deception or coercion, or takes advantage of the employer's difficult circumstances, to cause the employer to conclude an employment contract or to make an amendment to an employment contract contrary to the employer's true intent.

There are three statutory grounds under which an employee can be dismissed following 30 days' written notice (or one month's salary in lieu of notice) and payment of severance. These are where the employee:

- has fallen ill or sustained a non-industrial injury and, at the end of the medical treatment period, can neither engage in the original work nor in other work arranged by the company;
- is incompetent and remains incompetent after receiving training or assignment to another post; or
- is in a situation where the performance of the original employment contract becomes impossible due to a major change in the objective circumstances upon which the employment contract was based at the time of its conclusion, and consultations between the parties fail to produce agreement on amendment of the employment contract.

### **How do employers have to document the termination of an employment contract?**

In the case of unilateral termination by the employer, the employer must first provide written notice to the union. However, there is no specification for how this requirement can be complied with if the company has no union.

The employer must complete the exit formalities for the employee including issuing an exit notice. For foreign nationals, the employer must report to the local labor authority and cancel the work permit within 10 working days upon termination.





**What is the responsibility of employers for damages incurred by an employee's actions within his/her work?**

Employers can be held vicariously liable for acts (such as negligence) of an employee in the course of their employment.







## b. Independent contractors/consultants\*

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#### *Definition of an independent contractor/consultant*

There is no legal definition of independent contractor/consultant.

*\*The term consultant will be used to also refer to independent contractors, or any other term that would mean a natural person that provides goods or services under a written contract or a verbal agreement but does not work to meet the definition of employee.*

### 1 Contracts

#### **What types of independent contractor/consultant agreements are available? Are there any specific agreements available to NGOs?**

There is no legal requirement for any particular form of agreements when engaging independent contractors /consultants, and for any format of agreements for NGOs. When engaging contractors/consultants, a labor service agreement/consulting agreement with the contractor/consultant is often used.

#### **What are the main elements of consultant agreements?**

Consultancy agreements will typically include provisions around the term of the engagement, duties and obligations, fees, expenses, confidentiality, data protection, intellectual property, insurance and liability, termination, governing law and dispute resolution.

#### **Is it possible to have probation periods for independent contractors/consultants? If yes, for how long?**

It is not common to have probation periods for independent contractors/consultants.

#### **Is it possible to have a fixed term consultation/independent contractor agreement? Are there any restrictions around fixed term consultant/independent contractor agreements?**

Yes, is it possible and common to have a fixed term consultation/independent contractor agreement. Although there are no restrictions around the length of the term, most usually this would be for the term of a particular project, as the nature of a consultant/independent contractor arrangement is often that the arrangement ends when the work is completed.





**Do independent contractor/consultant agreements have to be in writing? Are there any signatory requirements? For example, could they be signed in-person or electronically, etc.)?**

There is generally no legal requirement for the consultant/independent contractor agreement to be in writing, although this is often considered the best practice. The agreement can be signed in person or electronically.

In terms of electronic signature, under PRC law an electronic signature can only be considered reliable if certain conditions/standards are satisfied. In practice, an electronic signature created and certified by a qualified electronic certification service provider which has obtained an Electronic Certification Service License issued by the PRC Ministry of Industry and Information Technology is more likely to be considered a reliable electronic signature. Most of the providers with such license are Chinese companies. Having said that, it is always good practice and highly recommended to execute a contract in wet ink signatures.

**Do all types of independent contractors/consultants have to be under contract in order to be able to work?**

The contract will set out the terms on which the work will be carried out, but there is no legal obligation for this to be in any particular format, and it can be a verbal or written agreement.

**Can you provide a simple template of the agreements mentioned above?**

There is no universal template in the PRC. The agreement should be prepared based on the particular circumstances of the appointment.

**Is there an obligation to run a criminal record check to the extent that any independent contractor will be working with children or vulnerable people?**

There is no such obligation, unless the individual is engaged to undertake a number of limited special roles as provided by law. These include but are not limited to: accountant, teacher, journalist, security guard, senior executives, etc.

## 2 Conditions of work for consultants

**Are there any minimum age requirements for an individual to work under a consultant/independent contractor agreement?**

Entities (other than institutions of literature and art, physical culture, and special arts and crafts) are prohibited from hiring any individual who are under the age of 16. For independent contractors/consultants who are 16 years old or above but under 18, the entity hiring them shall not assign to them any work or dangerous operation that may endanger their physical and mental health, which are overly-strenuous, poisonous or harmful, etc.

**Does a consultant/independent contractor need to obtain a license or any other permission in order to work?**

It depends on the specific work to be carried out by the consultant/independent contract.

### Payment

**Are there any minimum pay requirements for consultants/independent contractors?**





No, assuming that the consultant/independent contractor is not deemed to be an employee, they will not be entitled to receive the statutory minimum wage for employees.

**Are there any exceptions in minimum wages for young persons or people with disabilities?**

There are no such exceptions.

**Is there any requirement to provide statutory/paid leave to consultants for statutory holidays?**

No, assuming that the consultant/independent contractor is not deemed to be an employee, they will not be entitled to statutory/paid leave.

**Is there any requirement to pay annual leave to consultant/independent contractors? If so, how is this compensated, if at all?**

No, assuming that the consultant/independent contractor is not deemed to be an employee, they will not be entitled to paid annual leave.

**Is there an obligation to provide consultant/independent contractors with overtime? How is this compensated if required?**

There is no legal right to overtime, unless provided for under the terms of the contract.

**Are consultants entitled to an end-of-year payment?**

There is no legal right to an end-of-year payment, unless provided for under the terms of the contract.

**Are consultants entitled to a final payment when the contract is terminated?**

There is no legal right to a final payment on termination, unless provided for under the terms of the contract.

**Working hours**

**Are consultants entitled to any type of leave, whether paid or unpaid?**

There is no legal right to any type of leave, unless provided for under the terms of the contract.

**Social security**

**Does the end user engager need to make any social security contributions on behalf of a consultant/independent contractor? Are independent contractors entitled to health insurance from the end user engager?**

The end user engager is not obliged to make any social security contributions on behalf of a consultant/independent contractor, provided that the consultant/independent contractor is not deemed to be an employee.

There is no legal right to health insurance from the end user engager, unless provided for under the terms of the contract.

**Are independent contractors/consultants entitled to unemployment insurance/benefits after termination of their independent contractor/consultancy agreement from the end user engager?**





There is no legal right to unemployment insurance/benefits from the end user engager.

**Are independent contractors/consultants entitled to sick leave from the end user engager? If yes, for how long? How many days have to be paid?**

There is no legal right to sick leave from the end user engager, unless provided for under the terms of the contract.

**Are independent contractors/consultants entitled to maternity leave from the end user engager? If yes, for how long? How many days/months have to be paid?**

There is no legal right to maternity leave from the end user engager, unless provided for under the terms of the contract.

**Are independent contractors/consultants entitled to paternity leave from the end user engager? If yes, for how long? How many days/months should be paid?**

There is no legal right to paternity leave from the end user engager, unless provided for under the terms of the contract.

**Are employers obliged to cover work-place injuries for independent contractors/consultants?**

End user engagers may be obliged to cover work-place injuries for independent contractors/consultants based on the principle of liability for fault. Therefore, in order to mitigate such risks, it is common practice for end user engagers to purchase commercial insurance for independent contractors/consultants.

**Are independent contractors/consultants entitled to retirement benefits from the end user? If yes, what benefits?**

There is no legal right to retirement benefits from the end user engager, unless provided for under the terms of the contract.

### 3 Safe and supportive work environment

**Are there any differences in terms of the regime that applies to employees?**

Employers are responsible for the health and safety of their employees and those that are affected by their activities (which would include independent contractors/consultants) so far as reasonably practicable. To this extent, the obligation is the same as that applies in relation to employees.

### 4 Remote work

**Are end user engagers required to have a registered legal entity in the jurisdiction in order to hire independent contractors/consultants there?**

No.

### 5 What to do when things go wrong

#### Resignation

**Do consultants/independent contractors need a reason to terminate the contract or can they terminate it for any reason in accordance with the terms of the contract?**





There are no legally specified grounds for resignation, although the reasons for termination (and the impact of that reason on other terms such as notice period) will often be set out in the contract.

### **Termination of agreement**

#### **What grounds do end user engagers have for the termination of consultant agreements?**

There are no legally specified grounds for the termination of consultant agreements. Termination grounds will depend on the terms of the contract.

#### **What is the responsibility of the end user engagers for damages incurred by a consultant's actions within his/her work?**

End user engagers shall be held responsible for the acts of independent contractors/consultants in the execution of the work for which they are engaged. After end user engagers bear the relevant responsibilities, they may claim indemnification from the independent contractors/consultants for their willful misconduct or gross negligence.





## c. Volunteers

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#### *Definition of a volunteer*

There is no legal definition of a volunteer or similar status under PRC employment law. There is a legal definition of “volunteer” under the PRC Regulations on Voluntary Services, which refers to an individual who provides voluntary services using their own time, knowledge, skills, physical strength, etc. The information in the remainder of this section assumes that the volunteers hereby refer to those providing voluntary services to charitable organizations.

### 1 Contracts

#### **Are organizations required to sign any form of agreement with volunteers?**

There is no legal obligation for charitable organizations to enter into written agreements with volunteers. Charitable organizations may enter into an agreement with volunteers as needed, to set out the rights and obligations of the parties, scope of the voluntary services, working conditions, security measures, etc.).

### 2 Conditions of employment

#### **Is there a minimum age requirement for volunteers?**

In China, there is no specific nationwide law that establishes a minimum age requirement for volunteers in charities. However, certain regulations may apply at the regional or organizational level. For instance, some charities or volunteer organizations may have their own policies regarding the minimum age of volunteers. These policies can vary depending on the type of work, potential risks involved, and the organization's internal guidelines.

Additionally, if a volunteer is a minor (under 18 years old), they might require consent from a parent or guardian to participate in certain activities. In practice, some organizations may also have additional requirements, such as parental supervision or specific consent forms, for minors to ensure their safety and well-being.

#### **What type of volunteering work may a child undertake? Are there any restrictions around this?**

PRC law provides that the types of volunteering work that a child may undertake must be appropriate to their age, degree of education, skills, physical conditions, The policies of the specific charity or volunteer organization may also determine the particular work which the child can undertake.





## Payments and reimbursement

### Are organizations allowed to pay stipends to volunteers?

Yes, charitable organizations may, due to the needs of the relevant charitable activities, provide certain stipends (e.g. in terms of transportation, accommodation, meals, etc.) to volunteers.

### Are organizations allowed to reimburse volunteers? If yes, for what expenses (such as transportation, food, etc.).

Yes, there is no legal restriction on the payment of reimbursement of reasonable expenses arising from the volunteering activities or benefits in kind in the form of subsistence to volunteers.

## Working hours

### Are there any obligations around how many hours volunteers can work?

No, working time limits do not apply to volunteers.

### Are volunteers entitled to any type of leave?

No.

## Social security

### Are organizations obliged to pay any social security contributions on behalf of their volunteers?

No.

### Are organizations obliged to provide health insurance to volunteers?

No.

### Are organizations liable for absences of volunteers due to work-place injuries?

The volunteer has no legal right to sick leave/pay. Before a charitable organization arranges for volunteers to participate in charitable services where personal injury might occur, it is obliged to purchase accidental personal injury insurance for volunteers.

Further, where volunteers suffer an injury due to the fault of a charitable organization in the process of participating in charitable services, the charitable organization shall be liable to pay compensation in accordance with the law. In case the injury is caused due to any force majeure event, charitable organizations shall pay appropriate compensation.

## 3 Safe and supportive work environment

### Are there any differences in terms of the regime that applies to employees?

There is a general obligation for charitable organizations to provide necessary safe and hygienic conditions for volunteers to participate in the relevant charitable activities.

## 4 Tax

### Are organizations obliged to pay taxes if they pay their volunteers stipends? If yes, what types of taxes are mandatory to pay?





Yes, generally speaking, any payment that is more than out-of-pocket expenses may be treated as taxable income, so individual income tax may apply.

## 5 What to do when things go wrong

### **What grounds do organizations have for the termination of volunteer agreements/arrangements?**

There are no legally specified grounds for the termination of volunteer arrangements.

### **What is the responsibility of organizations for damages incurred by a volunteer's actions within his/her work?**

According to the *PRC Charity Law*, where a beneficiary or third party suffers damage caused by the fault of a volunteer, the charitable organization shall be liable to pay compensation according to law; if the damage is caused due to a volunteer's willful misconduct or gross negligence, charitable organizations may have the right of recourse against volunteers.







## d. Non-citizen employees and consultants, including refugees and others forcibly displaced

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### 1 Status and the right to work

#### **Are employers obliged to secure legal status for their employees or consultants if they are non-citizens? (such as refugee status, humanitarian visas, visas for trafficking survivors, other recognized protection statuses, etc.)**

Generally speaking, China does not accept refugees and others forcibly displaced in practice, notwithstanding some statutory provisions (e.g. the PRC Constitution Law provides that China may grant asylum to foreign nationals who apply for it on political grounds). Any expatriates must obtain a Chinese visa of certain category before they can enter the mainland China. The Chinese government generally does not grant visas to trafficking survivors or people with other recognized protection status. On this basis, our responses in this Part D do not include refugees and others forcibly displaced.

#### **Are employers obliged to secure work permits for their employees or consultants?**

Yes, employers must secure a work permit and a residence permit for their expatriate employees before such employees can legally work for the employer in the PRC; failing which, if such situation is discovered by the competent public security authority, the authority may:

- prohibit the expatriate employees from working for the employer;
- impose a fine of RMB5,000-20,000 on each expatriate employee;
- imprison the expatriate employee for 5-15 days or order them to leave China within a specific time limit in serious cases; and
- impose a fine of RMB10,000 on the employer for each expatriate employee found to be in illegal employment (up to RMB100,000) and order the employer to undertake all the costs and expenses incurred for repatriating such employees.

Expatriates cannot work in the PRC as independent contractors/consultants.

#### **Is it always necessary to obtain a work permit?**





Yes, generally speaking it is always necessary for employers to obtain a work permit and a residence permit for their expatriate employees.

**Can asylum-seekers and other persons forcibly displaced access the right to work if they do not have refugee status or other recognized protection statuses?**

N/A. Please see [above](#).

## 2 Contracts

**Are employment contracts or consultant agreements for non-citizens different to those for citizens?**

Generally speaking, employment contracts of expatriate employees are virtually the same as those of PRC nationals. Subject to local court practice (e.g. Shanghai), employers are allowed to reach special agreements in the employment contract with expatriate employees in terms of contract term, position, working hours, conditions for termination, and liability for breach of contract. For instance, a termination-at-will clause in an expatriate's employment contract is generally deemed enforceable by the courts in Shanghai.

## 3 Conditions of employment

**Does national law regulate the quotas for the number of non-citizens within one organization?**

No.

**Are employers obliged to report about employed non-citizens?**

No.

**Are there any other differences in conditions of employment for non-citizens and citizens?**

No.

**Are there any specific employment terms that apply to citizens but not apply to non-citizens?**

Employers are obliged to pay PRC mandatory social insurance and housing fund contributions for their Chinese full-time employees.

For expatriate employees, employers are not required to pay housing fund contributions for them, and in certain localities (e.g. Shanghai), employers are not mandatorily obliged to pay PRC social insurance contributions for their expatriate employees.

## 4 Safe and supportive work environment

**Are there any differences in a safe and supportive work environment approach for non-citizens? If yes, please elaborate here.**

No.

**Does the employer have additional obligations for non-citizens?**





No.

## 5 What to do when things go wrong?

**Is the process of termination of an employment contract for non-citizens different than for citizens? If yes, please explain here.**

Yes, where an expatriate's employment contract is terminated for whatever reason, the employer is obliged to deregister their work permit and residence permit within a specified period of time.

**Is the process of resignation for non-citizens different than for citizens? If yes, please explain here.**

No. Please see answer to previous question above.

**Are non-citizens entitled to the equal protection of employment laws in the event of employment-related disputes?**

Yes.





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