



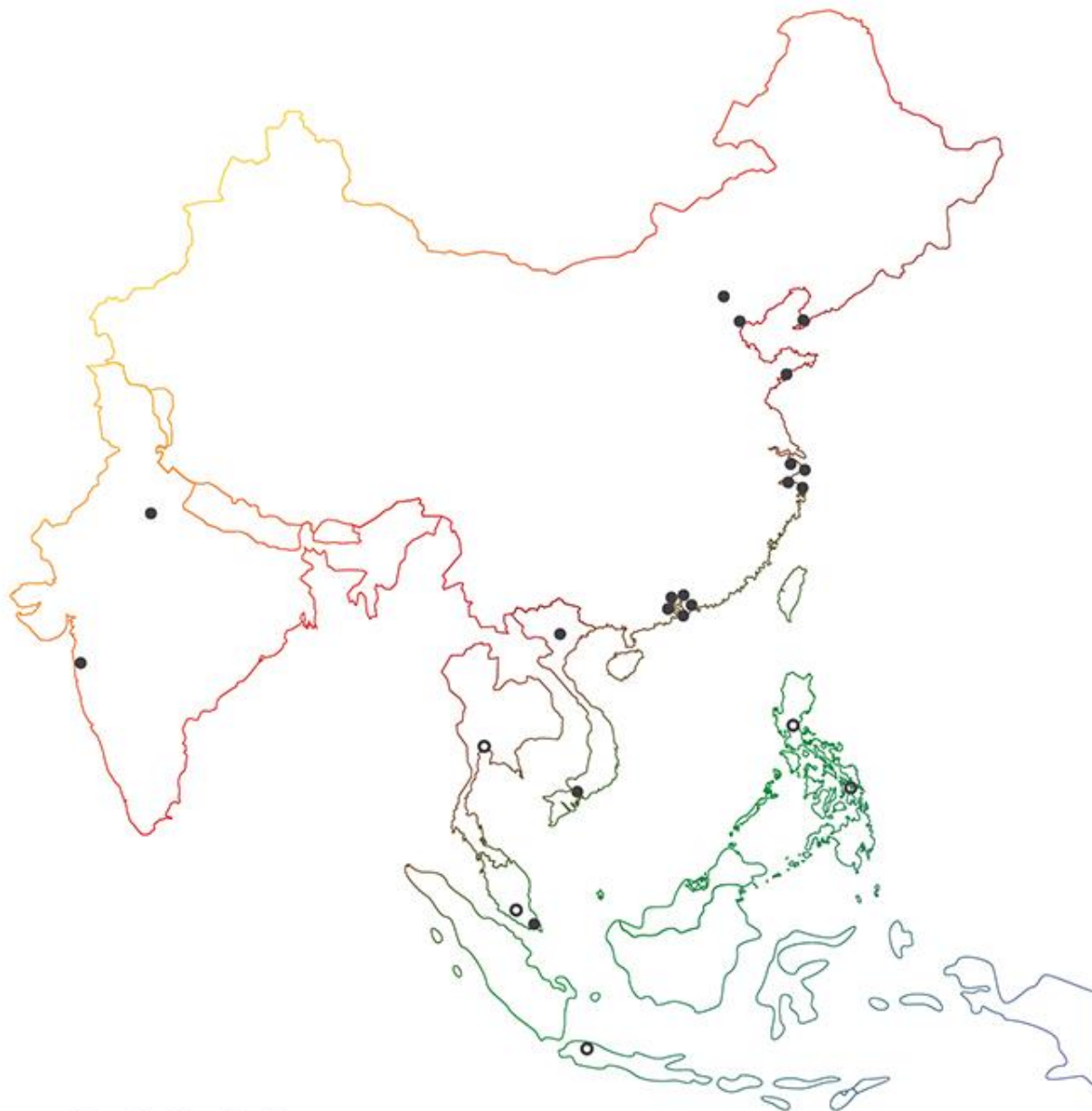
DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

How To Avoid Common Labor Disputes

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- Dezan Shira & Associates Offices
- Dezan Shira Asian Alliance Members

CHINA

- | | |
|-------------------------------------|-------------------------------------|
| Beijing
beijing@dezshira.com | Qingdao
qingdao@dezshira.com |
| Dalian
dalian@dezshira.com | Shanghai
shanghai@dezshira.com |
| Dongguan
dongguan@dezshira.com | Shenzhen
shenzhen@dezshira.com |
| Guangzhou
guangzhou@dezshira.com | Suzhou
suzhou@dezshira.com |
| Hangzhou
hangzhou@dezshira.com | Tianjin
tianjin@dezshira.com |
| Ningbo
ningbo@dezshira.com | Zhongshan
zhongshan@dezshira.com |

HONG KONG

- hongkong@dezshira.com

INDIA

- | | |
|-----------------------------|-------------------------------|
| Delhi
delhi@dezshira.com | Mumbai
mumbai@dezshira.com |
|-----------------------------|-------------------------------|

SINGAPORE

- singapore@dezshira.com

VIETNAM

- | | |
|-----------------------------|---------------------------------------|
| Hanoi
hanoi@dezshira.com | Ho Chi Minh City
hcmc@dezshira.com |
|-----------------------------|---------------------------------------|

DEZAN SHIRA ASIAN ALLIANCE MEMBERS

- | | |
|-------------------------------------|---|
| Indonesia
indonesia@dezshira.com | Thailand
thailand@dezshira.com |
| Malaysia
malaysia@dezshira.com | The Philippines
philippines@dezshira.com |

DEZAN SHIRA LIAISON OFFICES

- | | |
|------------------------------------|-----------------------------------|
| Germany
germandesk@dezshira.com | Italy
italiandesk@dezshira.com |
| United States
usa@dezshira.com | |

Agenda



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1. *A Common Error*
2. *Employment Contracts*
3. *Staff Handbook*
4. *Working Hours*
5. *Attendance*
6. *Annual Leave*
7. *Performance Assessment*
8. *Termination of Contract*
9. *Disciplinary Measures*



***A Common Error:
Hiring Before
Establishing Rules
and Standards***



HR in China at a Glance

Mandatory
written
contracts

Probation
period

Regional
Variations

Rep Office
hiring
limitations

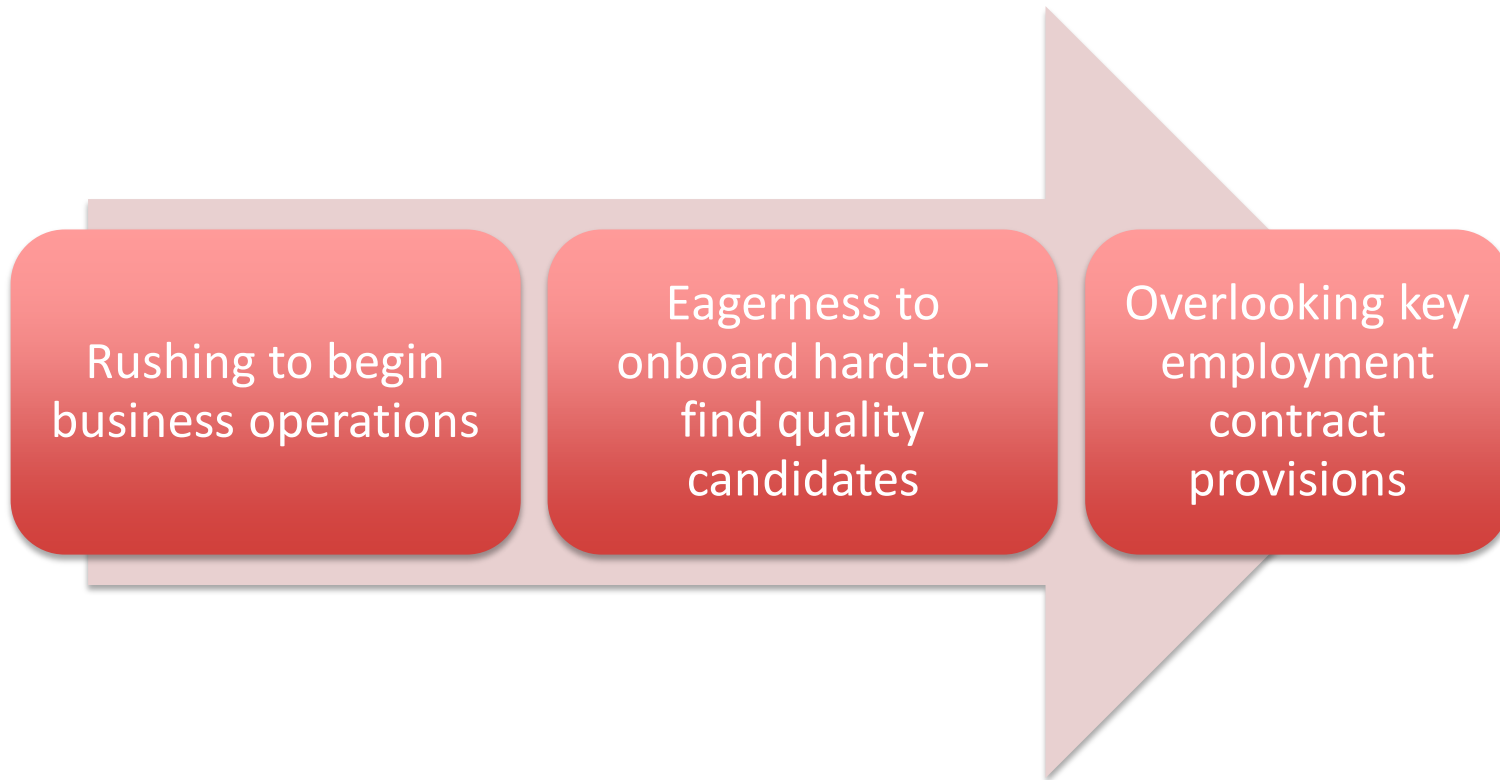
Leave during
first year

No at-will
terminations

Contract
extensions

Severance

The Rush to Hire



Before hiring...

Set employee standards

Codes of conduct

Performance

Promotions

KPIs

Issue employment contracts

Communicate/record standards and rules

Keep Detailed Records



Employee standards



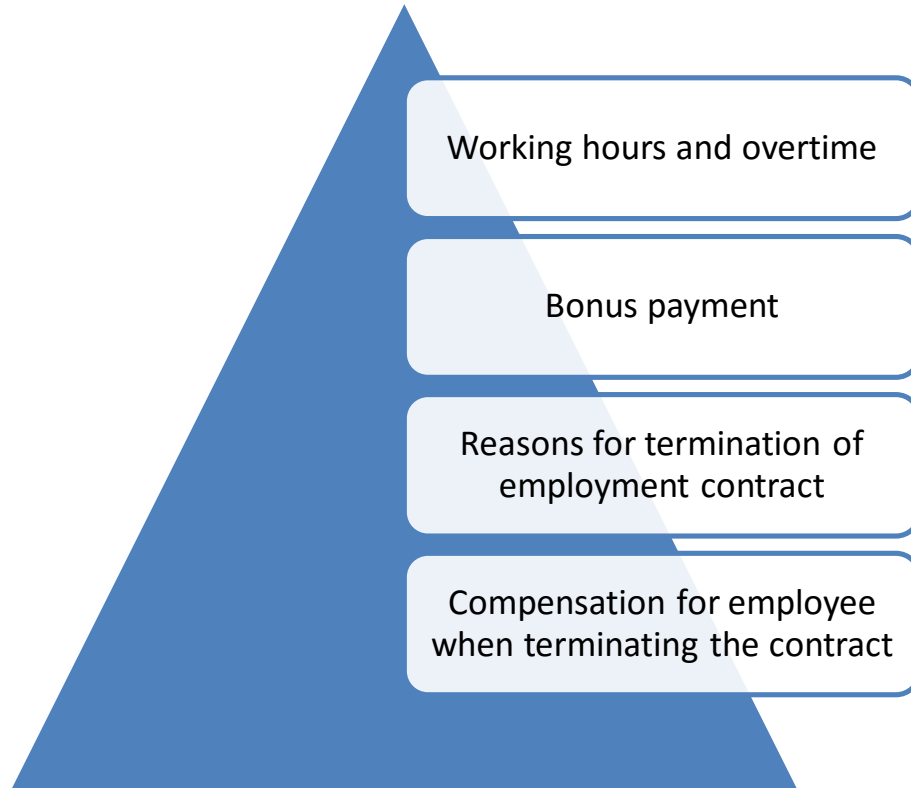
HR rules and procedures



Interactions with employees

Remember, the burden of proof lies with the employer in the event of a dispute.

Common Disputes



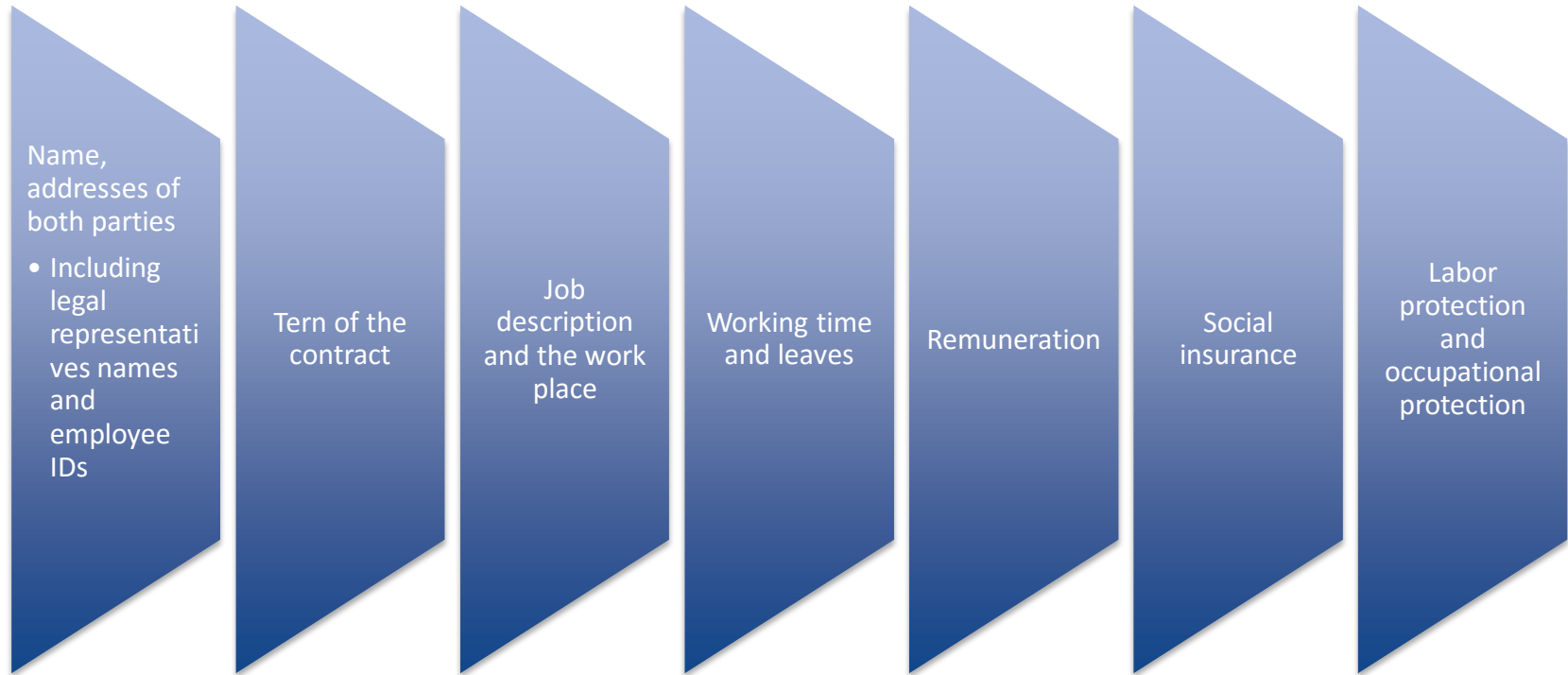
Employment Contracts



Employment Contracts in China



Mandatory Clauses



Fixed-term, open-ended, or project-based employment?

Worth Including in the Contract

Mention of
violations of
employee handbook
regulations

Non-competition
clauses

Non-disclosure
clauses

Staff Handbook



Staff Handbook

Guidelines on employer
and employee rights
and duties

Details on employment
contract provisions

“Code of Conduct”

Effective instrument and
proof of the content of
employment relation
when needed

Handbook Best Practices

Comprehensive
but not
excessively bland

Written in
appropriate
language
understood by
both employer
and employee

Notification of
staff in case of
changes

- Hold meeting and have staff sign off new documentation

Suggested Content

Recruitment requirements and on board procedure

Working hours, overtime

Remuneration rules, bonuses and social welfare

Paid annual and other leaves,

Discipline measures including right for termination

Confidentiality and non-competition

Performance assessment

General behavior

Pension plan

Trainings

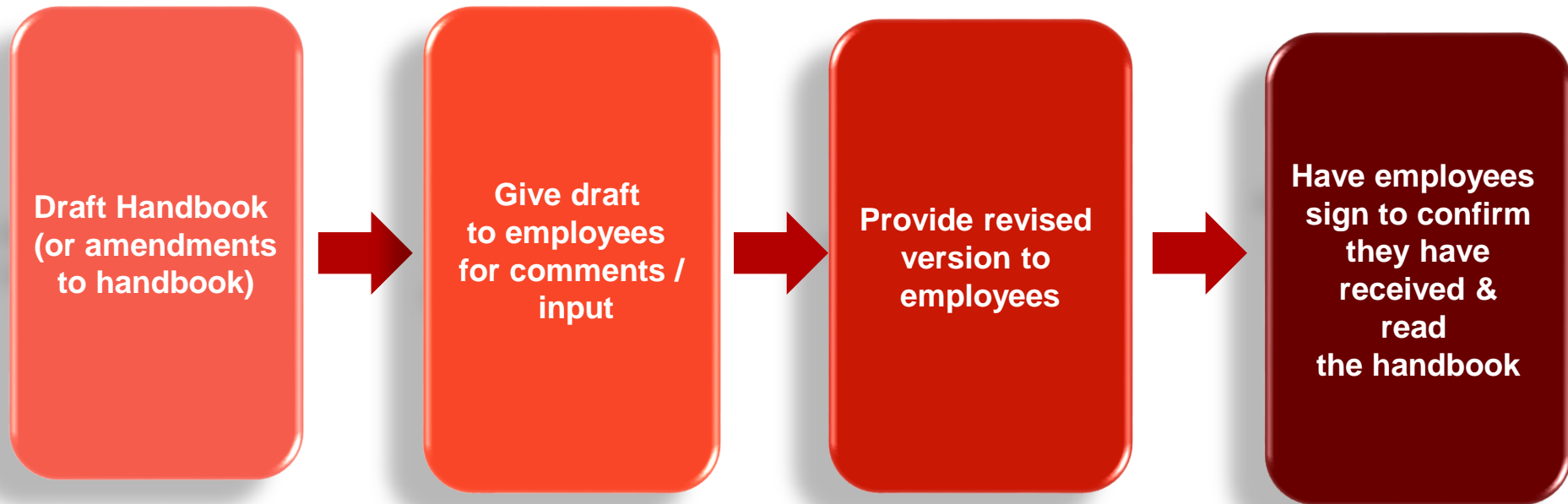
Workplace security

Procedures

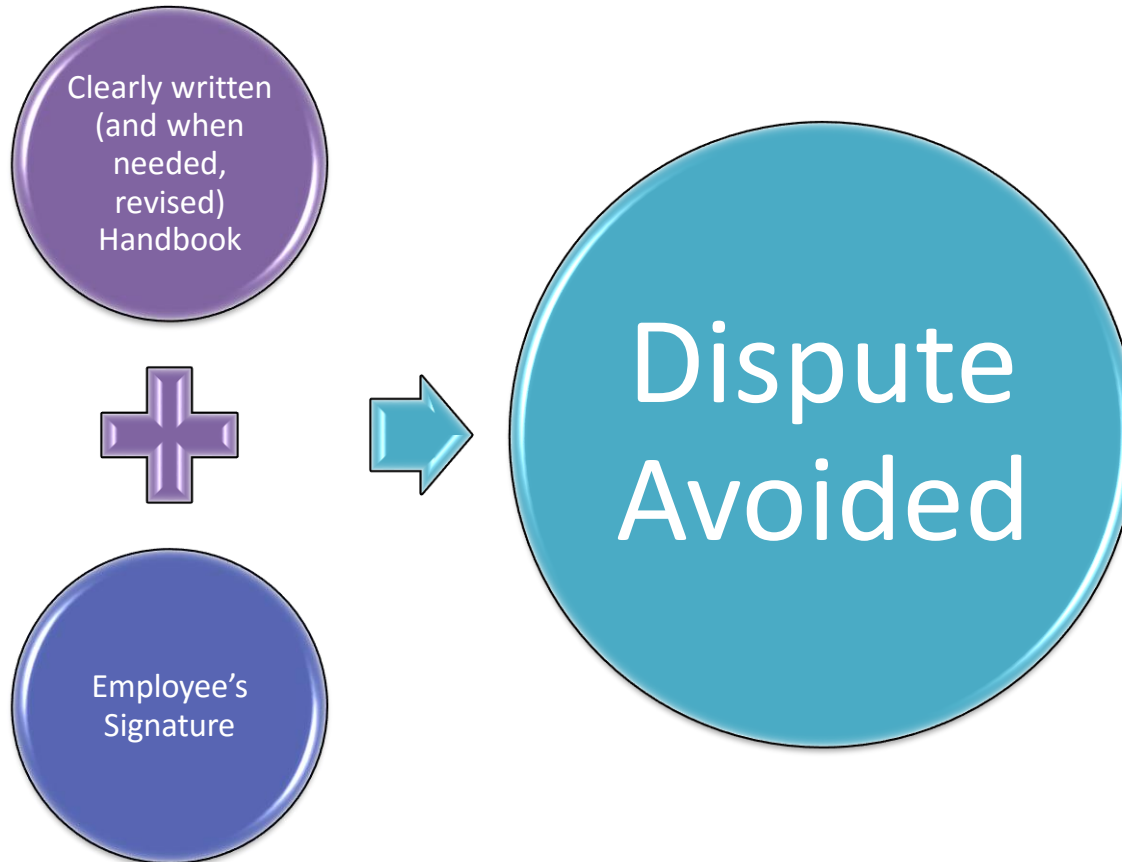
Special rules important for particular business

*To be addressed
in more detail*

Process of Validation for Employee Handbook



Imperative for Employees to Sign the Handbook



***Working Hours,
Overtime, Annual
Leave***



Working hours and overtime

Standard Labor Regulations

- Employees cannot work more than 8 hours a day, and no more than 40 hours per week
- Employees must have 1 day of rest per week
- Overtime cannot exceed 3 hours per day

Calculation

- Working day: 150% of basic hourly salary
- Weekend day: 200% of basic hourly salary
- Public holiday 300% of basic hourly salary
- *Compensation rate x hours worked overtime x basic hourly salary*

Other Working Hour Systems

Comprehensive working hour system

Calculated based on specific periods (week, month, year etc.)

Should follow rules of Standard system; **average** weekly working time should not exceed 40 hours.

Suitable for industries with unique work hours such as railways, transportation etc.

Non fixed working hours system

Does not follow specific working time.

Applies to senior management, salesperson, drivers, etc. whose whose working times are inconsistent or hard to calculate.

Overtime Approval Procedure and Attendance

Written application form submitted in advance

Approved by appointed person eg. direct superior or higher level for longer periods of overtime

Keep all records in the relevant employee's personal file

Attendance



“Absence from work without proper approval is a serious violation of company policy”

Paid Statutory Annual Leave

Statutory Annual Leave

Work Tenure	Days Leave
Less than one year	No leave
1-10 years	5
10-20 years	10
Over 20 years	15

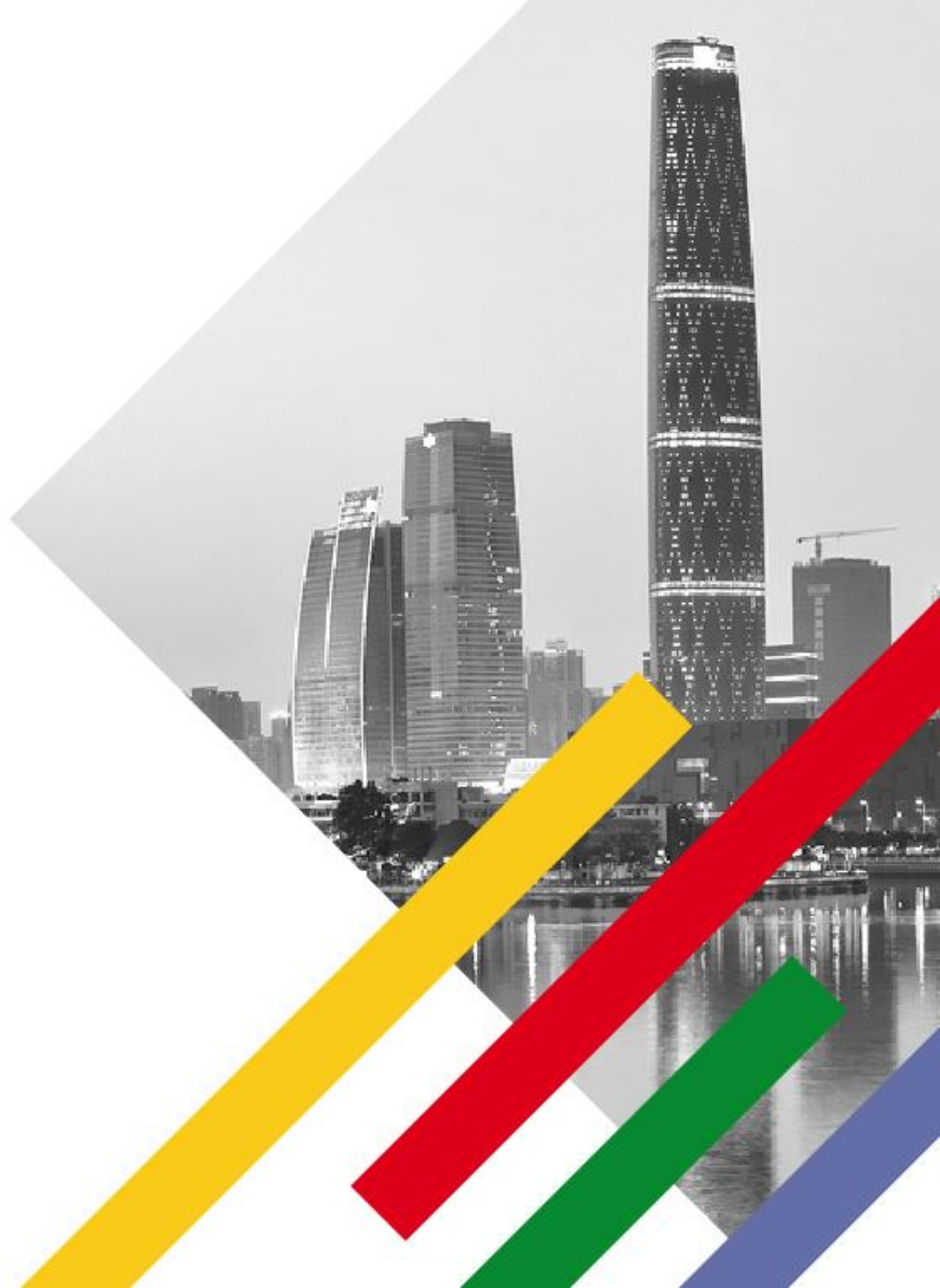
How to Deal with Employee's Untaken Leave

If an employee chooses not transfer their untaken annual leave over to the following year, it falls on the employer to:

Compensate the employee with 200% of the employees daily wage, for each day of unused annual leave.

It's important to note that the monthly salary does not include overtime.

Performance Assessment



Performance Assessment

Ensure level of
employee performance

Provide legal grounds
for termination

Should be scheduled
and recorded



Types

Probation Assessment

- The result can be the basis for passing the probation or not

Annual Assessment

- Specific assessment standards should be set up, and the result can be the basis for position or salary change

Annual Bonus

- Subject to employer's own discretion based on the profit status or business operational results

Assessment Procedure



All individual KPIs and following performance evaluations shall be recorded in writing and filed in the employee personal records.

Salary and Position Adjustments (Demotion)

Valid Reasons for Salary/Position Adjustment

An employee is incompetent

An employee is suffering from illness or non-work injury and cannot continue to do her/his job upon the expiry of the medical care period

An employee has fulfilled the orally agreed adjusted position for over one month

- **Definition of (in)competency** shall be defined either in Employee Handbook or job description
- Staff position evaluation and salary levels for different positions should be outlined in Employee Handbook

Termination



Termination

Immediate Termination

- Unqualified during Probation
- Corruption, Dereliction of Duty
- Simultaneously working for competitor
- Fraud
- Criminal Liabilities
- **Seriously Violation of Internal Rules and Regulations**

Severance / 30 Days Notice

- **Contract expires**
- **Bankruptcy**
- **Business License Revoked**
- **Incompetence – has to be proved**

Reasons for Termination

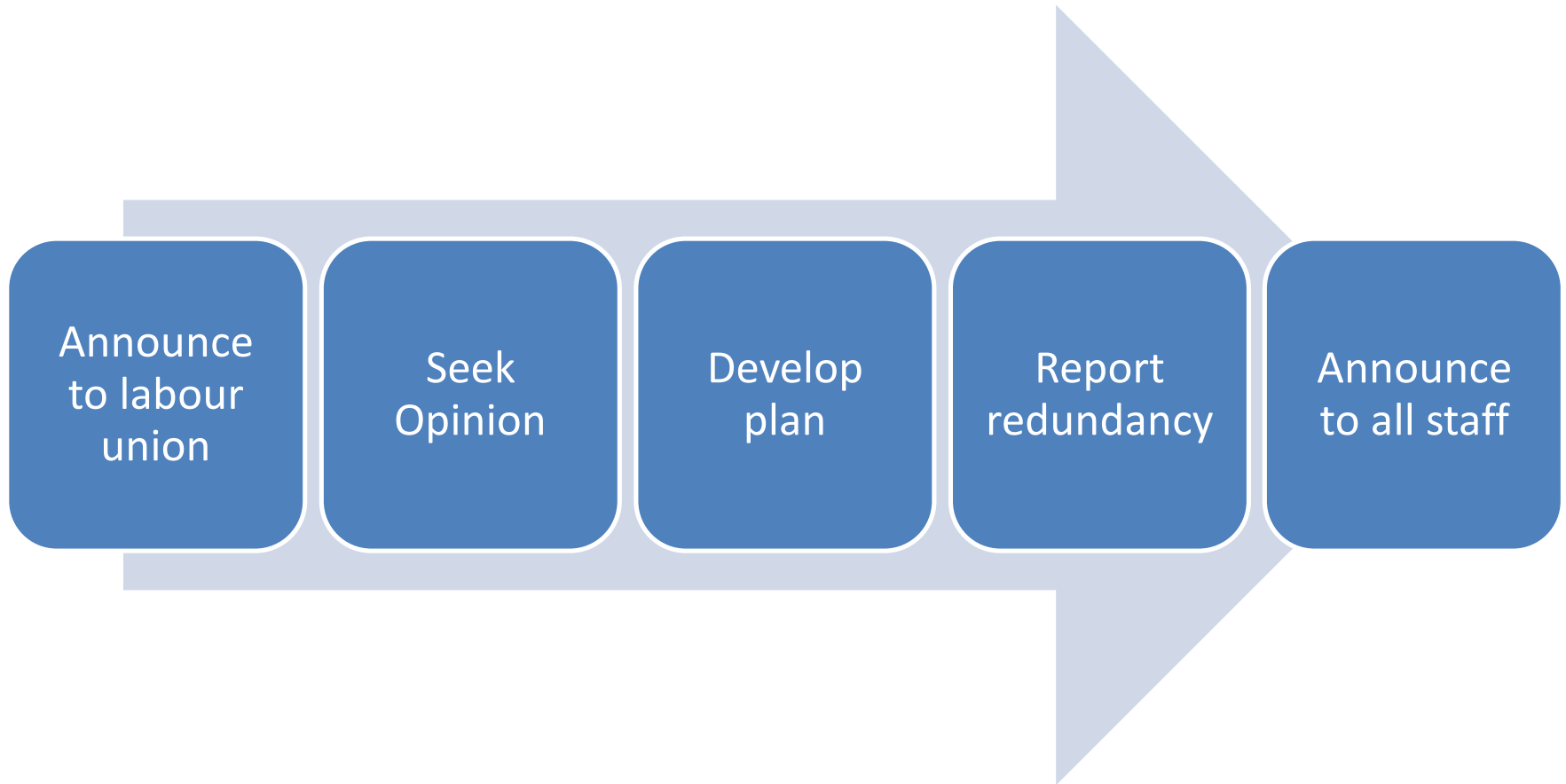
- Some reasons for termination include:
 - Employee is deemed unqualified for the job during the probation period.
 - Corruption on the part of the employee
 - Working for another conflicting company while still under employment contract
 - Employee was hired based on fraud on the part of the employee
 - Employee is being criminally investigated
 - Employee seriously violates company policy / internal rules (as stated in handbook)

Mass Layoffs

A mass layoff is defined as a situation in which a company terminates the labor contracts of at least 20 employees or 10% of the workforce

- The company needs a good operational reason to implement a mass layoff
- Advance notification should be provided to the labor bureau
- One month of compensation for each year worked should be paid to each employee

Procedure for mass layoff



Mass Layoffs

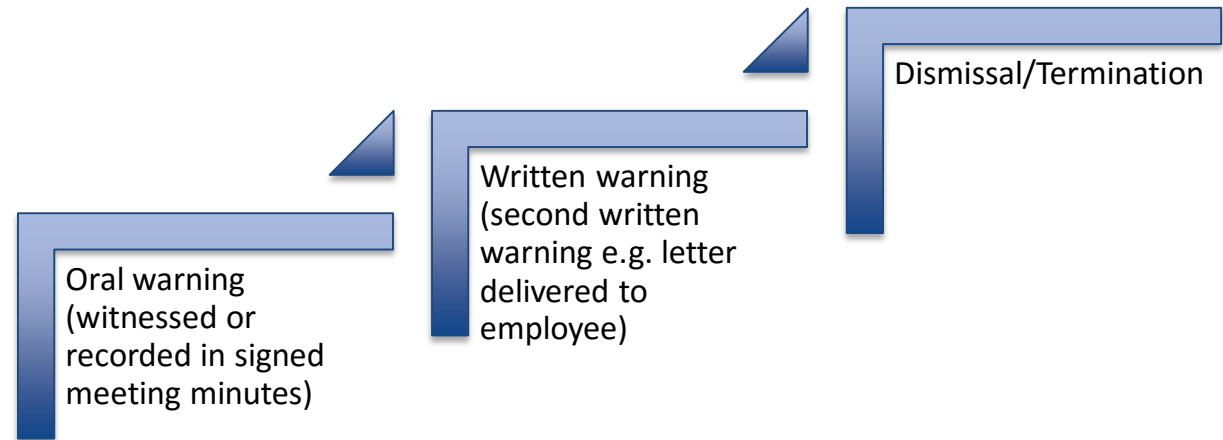
- As a general rule, employees with non-fixed term contracts and those with dependents in their family should be retained in preference to other employees
- If the company starts re-hiring employees within a six month period after the mass layoff, employees that were terminated should be given preferential treatment during the re-hiring process

Disciplinary Measures

Documentation of Disciplinary Action Must Be...

- In writing
- Signed by employee and/or provably delivered to employee
- Witnessed by superior, HR/legal dept. staff, disciplinary commission

Recommended Disciplinary Procedures



Formal Warning Letters

When drafting formal warning letters, make sure to ensure:



Consequences of Illegal Termination

If the employer terminates the employee's employment for other reasons than those allowed by Labor Contract Law, or without any reason the employer will be regarded:

To have **illegally terminated** the employees contract, and

Will be ordered by the court to **reinstate the employee**, or

To **pay damages to the employee** which generally amount to **twice** the rate of the severance pay

Consequences of Illegal Termination

Terminating an employees contract must be done in accordance with the Chinese government's regulations.

The Ministry of Human Resources and Social Security (MOHRSS) has issued a law. Come January 1st, 2017, any company who violates Chinese labor regulations, will have their offences made public.

Consequences of Illegal Termination

The following violations will be published:

Reduction or failure to pay employees' remuneration without reason

Failure of payment or enrolment in social insurance premiums

Violation of working hours or holiday/leave requirements

Violation of special provisions for female and underage employees


Violation of child labor laws

Other labor violations which have serious negative consequences on society

Consequences of Illegal Termination

Once the violations are published, the following information will also be made public:

The full name of the employer, address, social credit code or registration number, name of legal representative, details of the violation and verdict outcome will be made public by newspapers, magazines, television and other such media each quarter at county level, and twice yearly at provincial level.



The information will also be published on the MOHRSS Administration Department's online portal, and will be included on an employer's integrity and legal compliance file, entered into the MOHRSS credit system, and shared with other social organizations and governmental departments

Conclusion

Implement HR structure before hiring

Have every employee sign contracts

Draft a staff handbook

Detail requirements on working hours, attendance, leave etc.

Record performance assessments

Discipline before you terminate!

Q&A

- Please type your questions into the question box.

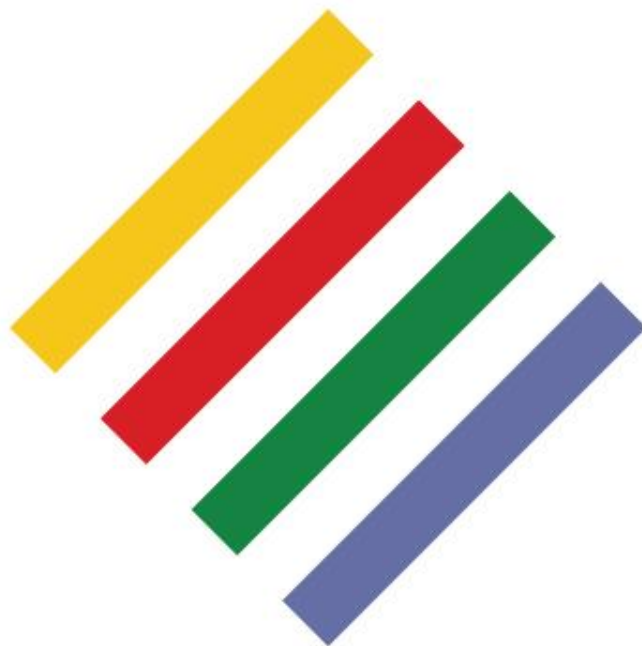


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Thank you





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