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Common Labor Issues in China and How to Avoid Them

Risks and Compliance Strategies

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June 12th, 2018





1992

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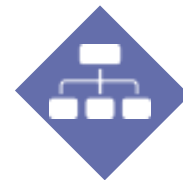
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- Transfer Pricing
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The Reasons Behind Labor Disputes



A Rise in the Incidence of Disputes

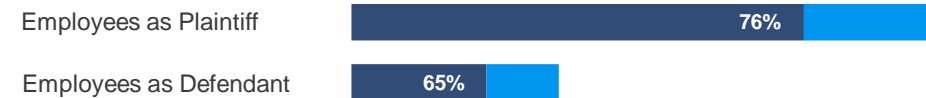
Labor Disputes in China

■ Number of labor disputes in China from 2011 to 2016 (in millions)



Trial Result for Labor Disputes in 2017

■ Number of cases employees won



Processing Time for Labor Disputes

Average	Min.	Median	Max.
96 days	1 day	74 days	3830 days

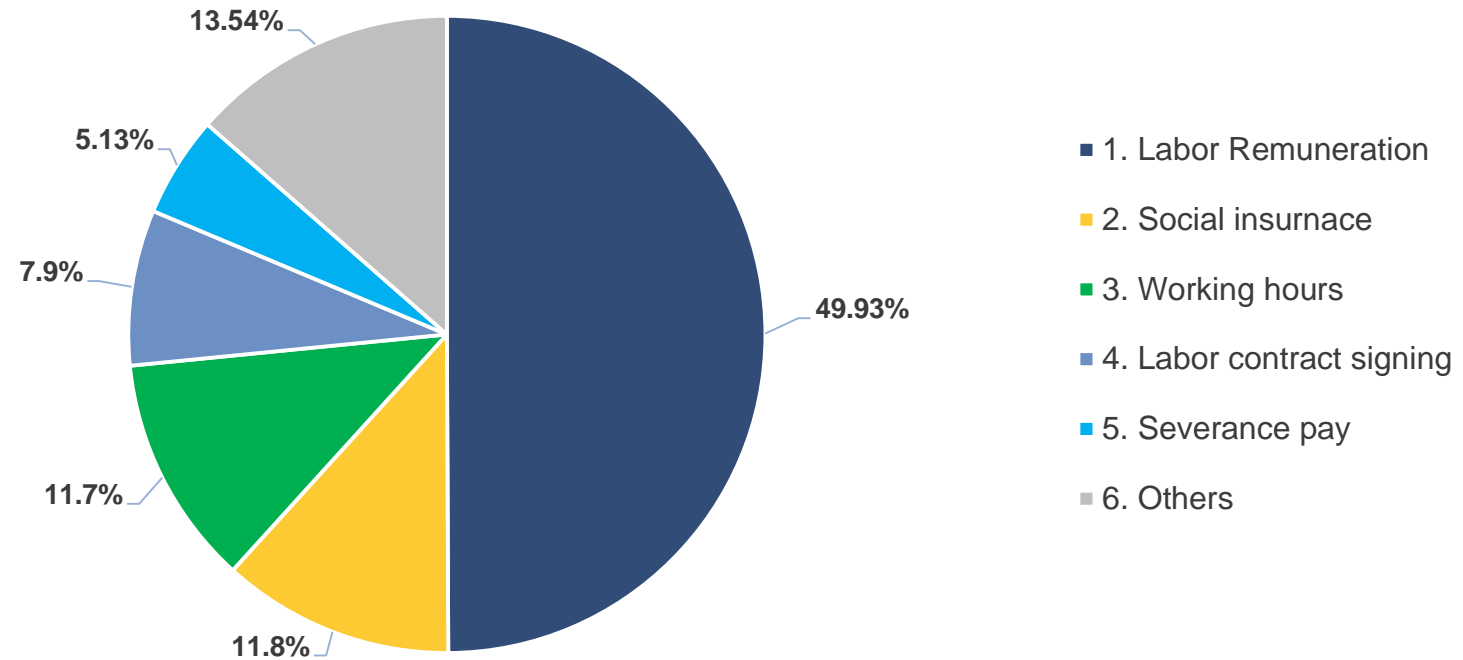
- Number of labor disputes increased dramatically in China from 2011 to 2016.
- Chinese employees are increasingly aware of their rights, disgruntled employees are litigious and increasingly take legal action (or threaten to do so).
- For employer, labor disputes are the waste of manpower, material, financial resources, energy.
- The whole process and result of labor disputes may hugely influence the current or future HR management within the company.

Source:

<https://www.statista.com/chart/10443/china-labor-disputes-on-the-rise/>
<http://www.stats.gov.cn/tjsj/nds/2017/indexeh.htm>
http://www.360doc.com/content/18/0308/10/32260249_735323479.shtml#

Causes for Dispute

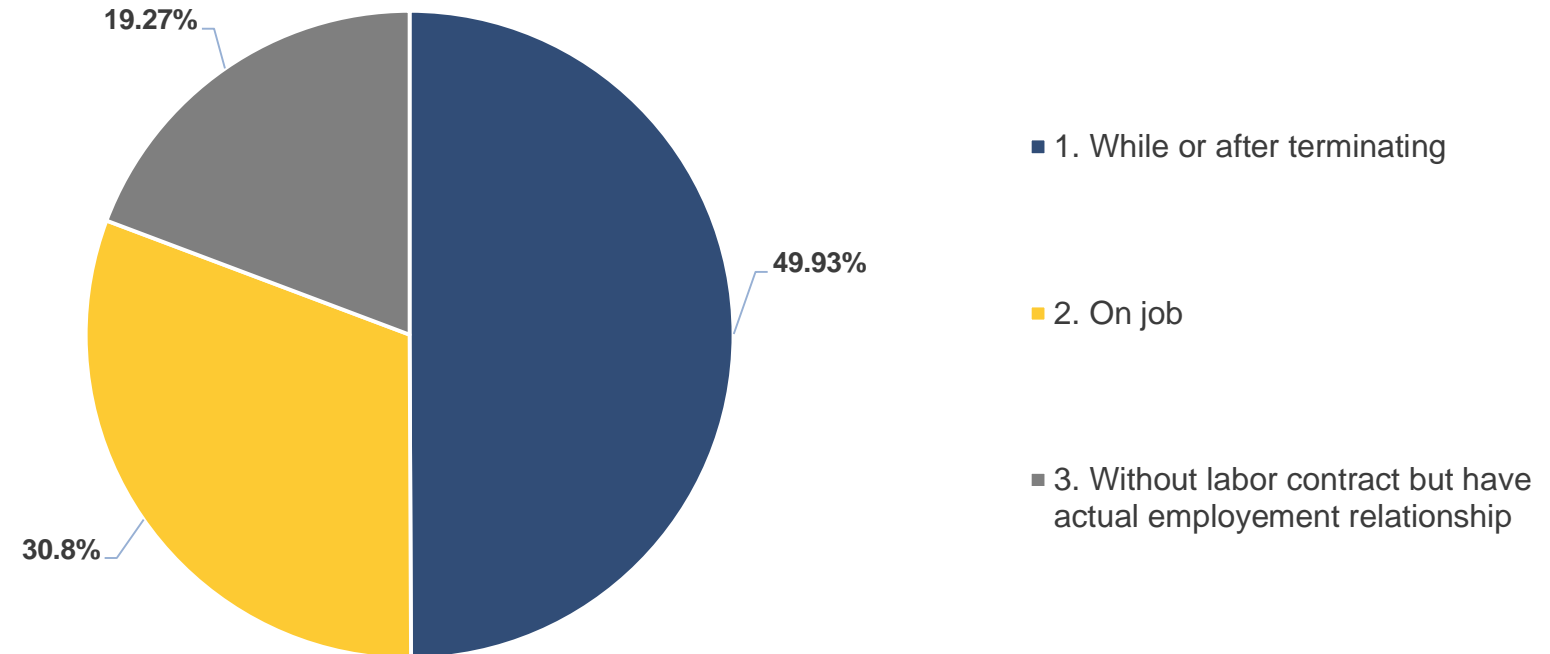
Cases handled by Labor Arbitrators (2014 ~ 2016)



Source: http://www.360doc.com/content/17/0503/08/1113159_650511372.shtml

Occurrence time of Disputes

The risks for the employer is usually while or after the termination



Source: http://www.360doc.com/content/17/0503/08/1113159_650511372.shtml

Drafting Employment Contracts



Employment Contract (Introduction)

Three Types of Employment Contracts

- 1) Fixed term contract
- 2) Non-fixed term contract
 - After 2nd fixed term contract or 10 years of employment employee is legally entitled to an open term contract
 - Not applicable to foreign employees who can only work on fixed-term contracts
- 3) Labor contract which expires upon completion of certain agreed assignments

Timing of Employment Contract Signing

- Must be signed within one month of commencement of labor relationship
- Penalties
 - Double salary from 2nd month to 12th month (or until contract is signed prior to 12th month)
 - Open term contract after 12th month

Language

- Employment Contract should be in Chinese or bilingual (with Chinese included)

Employment Contract (Content & Clauses in Article 17, Labor Contract Law of the PRC)

Mandatory Clauses

- 1) Name and address of the employer and the legal representative or key person-in-charge of the employer;
- 2) Name, address and identity card number or other valid identity document number of the worker;
- 3) Term of labor contract;
- 4) Job duties and work premises;
- 5) Working hours and rest periods and off days;
- 6) Labor remuneration;
- 7) Social security;
- 8) Labor protection, working conditions and occupational hazard prevention and protection;
- 9) Any other matters to be included in a labor contract as stipulated by the laws and regulations.

Additional Optional Clauses

- 1) Probation period
- 2) Training
- 3) Confidentiality
- 4) Supplementary insurance
- 5) Welfare and incentives
- 6) Others

Probation Period

Applicable Probation Periods

Contract Term	Maximum Probation Period
Less than 3 months	None
3 months ~ less than 1 year	1 month
1 year ~ less than 3 years	2 months
≥ 3 years or non-fixed term contract	6 months

Employer's Rights & Obligations

- The wage amount of a worker during his/her probationary period shall not be less than the lowest wage amount for the same job position in the employer's organization or 80% of the wage amount agreed in the labor contract and shall not be less than the minimum wage standard of the locality of the employer;
- Company can terminate employee during the probation period (with proof employee does not meet job requirements);
- The same employer (legal entity) and the same worker may only agree on probationary period once.

Employee's Rights & Obligations

- Employee is entitled with the social insurance, housing fund and statutory annual leave during the probation period;
- Employee can resign by giving 3 days prior notice to employer.

Overtime (OT) Compensation

OT Defined Under Standard Work Hour System

- Work will be considered as overtime if company requests employee(s) to work during time in addition to 40 hours per week
- Employer must arrange alternative leave for employees or pay the OT compensation for employees extra working hours.
- The OT hours for one employee per month shall be no more than 36 hours.

OT Compensation Under Standard Work Hour System

Time of Work	Percentage of Hourly Salary
Extra Hours Worked on Weekdays	150%
Hours Worked on Weekends	200%
Hours Worked on Holidays	300%

OT compensation calculation tips:

- Based on the hourly salary of the employees
- Daily salary: $\text{monthly salary} \div 21.75$
- Hourly salary: $\text{monthly salary} \div 21.75 \div 8$

Amendments (Labor Contract)

Salary Increase

- Theoretically, for all kinds of amendments of the labor contract content, the employer should sign an official agreement with the employees;
- Practically, as salary increase is a benefit for the employee, the employer may choose not to sign the agreement with the employee but instead of registering the changes on a internal form or sending a notice letter.

Salary Decrease

- To protect the company's interest, we highly suggest the employer to sign an official agreement with the employee for any salary decrease decisions with mutual agreement with employee;

Job Transfer

- As change the job position is the change of the labor contract content, signing an official agreement to with employees to demonstrate the fact is also recommended;

Renewal of Employment Contract

- Company should ask the employee to sign the renewed Employment Contract.

Designing the Staff Handbook



Staff Handbook (Content & Clauses)

Common Issues Detailed in Staff Handbook

- Company code of conduct
- All internal rules, guidelines and the rights of both parties
- Relevant Key Performance Indicators (KPIs), performance standards and assessment information
- Nondisclosure agreement
- Information about work environment
- Work hours and overtime rules
- Remuneration rules, social welfare rules, and bonuses
- Information about paid leave
- Behavior standards and discipline procedures
- Training information
- Workplace security rules
- Any other special rules relevant to the specific company/industry (i.e. manufacturing safety standards, hygienic food production standards)

Staff Handbook (Implementation – Democratic Process)

Recommended Procedures for implementation of Democratic Process

- Seek Employees' Opinion
 - Release Consultation Notice along with the draft of Staff Handbook to all employees (both physically and via email), and advise the employees to sign for receipt of the draft
 - Seek employees' opinions within a given period (e.g. 5 days or 10 days) via email
 - Close discussion and advise all the employees to sign the Opinions Collection Confirmation Form

- Official Announcement for Release of Finalized Staff Handbook
 - Publicly post (e.g. on bulletin board, or on company's intranet or on any share folder accessible to everyone) the Finalization and Implementation Notice along with the final version of Staff Handbook and send these two documents to all employees both physically and via email
 - Advise all employees to sign for receipt of one copy of the finalized Staff Handbook

Staff Handbook (Best Practices)

Link to Employment Contract

- Employment Contract should clearly reference Handbook (this will strengthen company's case if needed to dismiss an employee over a breach of company rules)

Define Major and Minor Breaches

- Handbook should differentiate between minor and major breaches (allowing company the right to dismiss an employee without compensation)
 - Major breach can result in immediate dismissal
 - Minor breach, can result in an official warning letter and company will specify how many minor breaches may constitute a major breach
- Please note that decision whether a breach was sufficiently serious to warrant dismissal can be challenged in arbitration

Staff Handbook (Best Practices)

Language

- Have Staff Handbook written in Chinese; as well as, language of responsible management (e.g. English)

Moderate Length and Content

- Avoid writing Staff Handbook that is too lengthy
 - May unnecessarily burden staff to stay in compliance and/or increases the workload of the HR department in supervising the rules
- Avoid subjective rules
 - Company should be able to explain why each of the regulations is included
 - If a dispute is taken to arbitration and company is found to have set subjective rules in order to find reasons to dismiss employees, the arbitrator is more likely to decide in the employee's favor

Amendments (Staff Handbook)

Amendments Requiring Democratic Process

- Democratic Process will need to be repeated for amendment(s) to Staff Handbook, especially when said amendment(s) have a direct bearing on the immediate interests of employees, such as:
 - Compensation
 - Insurance and benefits
 - Working hours, rest, or leave
 - Work safety and hygiene
 - Employee training and work discipline

New Hire

- Implementation of Democratic Process is not required for new employees joining company after Democratic Process has already been implemented
- New hire should review and sign copy of Staff Handbook

Making Social Insurance Payments



Social Welfares

Housing Fund

Designed to Ensure that workers save to purchase housing. Money from this fund can be used to pay the initial down-payment on a house. In most cases, a company determines the contribution rate (within the legal rate) when opening the housing fund account.

Pension

On the precondition that contributions have been made for at least 15 years, upon reaching retirement, an individual can receive a pension based on the accumulated in their individual fund.

Medical

In the event of illness/injury an employee can have part of the treatment covered by insurance. Contributions accrue to a card that can be used for pharmacy or out-patient costs in government approved hospitals and clinics (excludes international clinics).

Maternity

For the period which an female employee suspend working due to breeding, the insurance provides with necessary material benefits including maternity subsidy, medical service and maternity leave, to support their recovery and return to the job position after giving birth.

Work-related Injury

Work-related injury fund covers the cost of treatment should an occupational injury occur. The employer must pay some salary during the period of rehabilitation and, if the employee cannot return to work, compensation must be paid.

Unemployment

In the event of redundancy (not in the event an employee chooses to resign), on the precondition that an employee has contributed to unemployment for at least 1 continuous year, employee may claim unemployment benefits for a maximum of 24 months.

Social Welfare for Expat Employees

- Expatriates who works in China are required to pay five different types of social insurances;
- Housing fund is not required to be paid by expat employees.
- Expatriates from several countries are eligible for exemption for paying social insurance in China due to the bilateral agreement

Country	Date of implementation	Mutual range of exemption	Personnel exempt from paying insurance premiums in the participating countries
Germany	April 4, 2002	Pension, unemployment insurance	Dispatched personnel, subsidiary staff, those with no employer, naval crew, diplomatic employees
Korea	January 16, 2013	Pension for urban employees, rural endowment insurance, urban endowment insurance, unemployment insurance	Dispatched personnel, short-term employees, self-employed persons and investors, employees on board ships and aircraft, diplomatic and consular office personnel, government or public institutions employees
Denmark	May 15, 2014	Pension	Dispatched personnel, employees on navigational ships and aircraft, diplomatic and consular office personnel, government or public institution employees, Chinese nationals employed on Danish territory whose employment period is not more than six months, or falls under a training and education program of no more than 18 months, excepting persons who have already participated in the country's social insurance scheme
Canada	January 1, 2017	Pension for rural and urban residents	Dispatched personnel, self-employed persons, employees on board ships and aircraft, government employees
Finland	February 1, 2017	Pension, unemployment insurance	Dispatched personnel, self-employed persons, employees on navigational ships and aircraft, diplomatic or consular personnel and civil servants
Switzerland	June 19, 2017	Pension, pension for urban and rural residents, unemployment insurance	Dispatched personnel, employees on board ships and aircraft, diplomatic and consular personnel, government or public service agencies, accompanying family members
The Netherlands	September 1, 2017	Pension, unemployment insurance	Dispatched personnel, employees on board ships and aircraft, civil servants, diplomatic and consular personnel, accompanying family members

Source: <http://www.china-briefing.com/news/2017/10/02/social-security-china-exemptions-foreigners.html>

Social Welfares Rates (Guangzhou, 2018)

Type	Employer Portion	Employee Portion
Pension	14%	8%
Medical	7%	2%
Unemployment	0.8% / 0.64% / 0.48%	0.2%
Work-related Injury	0.2% ~ 1.4%	N/A
Maternity	0.85%	N/A
Serious Illness	0.26%	N/A
Housing Fund	8% ~ 12%	8% ~ 12%

NOTES:

1. The contribution rate of Unemployment and Work-related injury insurance is decided by the local social insurance bureau based on the consideration of industry which the company is in;
2. The contribution rate of Housing Fund of employee's can be different from the employer's which is decided by employees themselves. But the contribution rate for employees shall not be less than the employer's contribution rate;
3. The contribution base as well as the contribution rates will be usually adjusted every year, so the company need to pay attention to the government announcement to make sure the company is acting in compliance with the current regulations.

Employer Mandatory Benefit Calculation (Guangzhou, 2018)

For example: Chinese employee – in Guangzhou with monthly salary of RMB 30,000 pre-tax

Social Welfare	Employer Contribution Rate	Min. Base (RMB)	Max. Base (RMB)	Social Welfare Payment
Pension	14%	3,170	18,213	$18,213 * 14\% = 2,549.82$
Medical	7%	4,455	22,275	$22,275 * 7\% = 1,559.25$
Unemployment	0.8%*	1,895	22,275	$22,275 * 0.8\% = 178.20$
Work-Related Injury	0.8%*	1,895	22,275	$22,275 * 0.8\% = 178.20$
Maternity	0.85%	4,455	22,275	$22,275 * 0.85\% = 189.34$
Serious Illness	0.26%	7,425	7,425	$7,425 * 0.26\% = 19.31$
Housing Fund	10%*	1,895	37,125	$30,000 * 10\% = 3,000$
Total:				7,674.11

***NOTE:**

1. Unemployment insurance & Work-related Injury insurance are calculated using the contribution rate @ **0.8%**
2. Housing Fund is calculated using the contribution rate @ **10%**

Total Cost for Employer:

RMB 30,000 + RMB 7,674.11
 = **RMB 37,674.11 (+25.58%)**

Employee Mandatory Benefit Calculation (Guangzhou, 2018)

For example: Chinese employee – in Guangzhou with monthly salary of RMB 30,000 pre-tax

Social Welfare	Employee Contribution Rate	Min. Base (RMB)	Max. Base (RMB)	Social Welfare Payment
Pension	8%	3,170	18,213	$18,213 * 8\% = 1,457.04$
Medical	2%	4,455	22,275	$22,275 * 2\% = 445.5$
Unemployment	0.2%	1,895	22,275	$22,275 * 0.2\% = 44.55$
Housing Fund	10%*	1,895	37,125	$30,000 * 10\% = 3,000$
Total:				4,947.09

***NOTE:**

Housing Fund is calculated using the contribution rate @ 10%

Social Welfare Paid by Employee

= RMB 4,947.09 (-16.49%)

Social Insurance Incompliance (Penalties)

Enforceable Penalties (for failure to register/make correct contributions)

- Fine ranging from one to three times of the amount of the social insurance payable by the employer.
- Fine ranging from RMB 500 to RMB 3,000 by the person(s)-in-charge (e.g. GM, Legal Representative).
- Late payment interest calculated at 0.05% per day on the outstanding liability amount.
- Might raise the local bureau's attentions towards the company and lead to other labor inspections on the company.

Penalty Collection

- If Company refuses to pay the social insurance and penalty on time, the labor bureau or the tax authorities shall apply for compulsory collection with the People's Court.

Termination Tips and Advice



Types of Permissible Termination

Termination Type	Admissible Grounds	Severance	30 Days' Notice
During probation	<ul style="list-style-type: none"> It is proven during the probationary period that the worker does not satisfy the employment criteria 	No	No
Immediate	<ul style="list-style-type: none"> The worker has committed a serious breach of the employer's rules and system; The worker is guilty of serious dereliction of duties and corruption and causes the employer to suffer significant damages; The worker holds a labor relationship with another employer concurrently which has a severe impact on his/her performance of work tasks assigned by the employer or refuses to make correction as demanded by the employer; The labor contract is rendered void under the circumstances stipulated in item (1) of the first paragraph of Article 26; Criminal prosecution is instituted against the worker pursuant to the law. 	No	No
With prior notice	<ul style="list-style-type: none"> The worker suffers from an illness or a non-work-related injury and is unable to undertake the original job duties or other job duties arranged by the employer following completion of the stipulated medical treatment period; The worker cannot perform her/his duties and remains to be incapable of performing the job duties after training or job transfer; The objective circumstances for which the conclusion of the labor contract is based upon have undergone significant changes and as a result thereof, the labor contract can no longer be performed and upon negotiation between the employer and the worker, both parties are unable to reach an agreement on variation of the contents of the labor contract. 	Yes	Yes
Not renewing contract	<ul style="list-style-type: none"> End of contract term 	Yes	Yes
Mass-layoff (over 10 people or 20% of staff)	<ul style="list-style-type: none"> The employer undergoes restructuring pursuant to the provisions of the Enterprise Bankruptcy Law; The employer has serious production and business difficulties; The enterprise undergoes a change of production, significant technological reform or change of mode of operation and upon variation of labor contracts, there is still a need for retrenchment; or The objective circumstances for which the conclusion of a labor contract is based upon have undergone significant changes and as a result thereof, the labor contract can no longer be performed. 	Yes	Yes, to either all staff and/or the labor union. After hearing these parties, submit a report to the local Labor Bureau

Termination (Special Circumstances)

Under any of the following circumstances, the employer shall not rescind a labor contract pursuant to the provisions of Article 40 and Article 41:

- 1) Where a worker who has engaged in work exposed to occupational hazards has not undergone post-employment occupational health check or during the period where a worker is suspected to have contracted an occupational illness or under medical observation;
- 2) Where a worker has contracted an occupational illness or suffered a work injury while working for the employer and is confirmed to have lost his/her labor capability wholly or partially;
- 3) During the stipulated medical treatment period of a worker suffering from illness or non-work-related injury;
- 4) During the pregnancy, maternity leave or breastfeeding period of a female worker;
- 5) Where a worker has worked for 15 years consecutively with the employer and will attain his/her statutory retirement age in less than five years' time; or
- 6) Any other circumstances stipulated by the laws and regulations.

Severance Payment

Compensation Based

- Company required to pay one month's average compensation (i.e. gross salary, annual bonus, other subsidies) for every year worked for company
 - Average compensation will be calculated based on the average of the past 12 months
 - If employee has worked 6 months or more in a year period, employee will be entitled to average month compensation
 - If employee has worked less than 6 months in a year period, employee will be entitled ½ average month compensation

- Where the monthly wage of a worker is more than three times the local average monthly wage of employees of the preceding year announced by the Municipal People's Government of the centrally-administered municipality or the municipality divided into districts where the employer is located, the economic damages standard for economic damages to be made to the worker shall be based on three times of the average monthly wage and the years of service for which economic damages are paid for shall not exceed 12 years. (i.e. current Guangzhou economic compensation cap for calculation base is RMB 7425 * 3 = RMB 22,275)

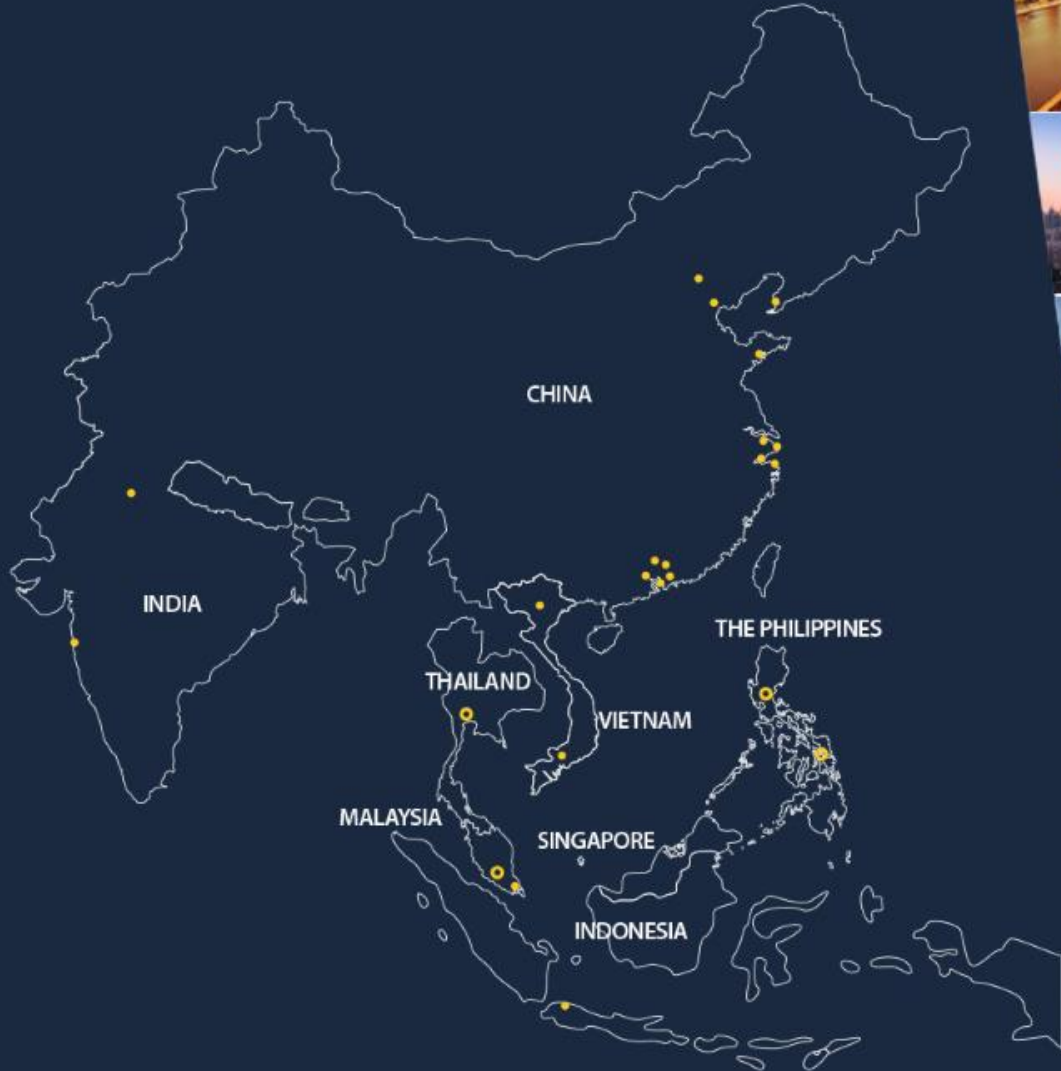
Additional Considerations

- Company required to pay 2x daily salary for amount of days with untaken statutory annual leave



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Appendix



Social Insurance Rates (Shenzhen, 2018)

Type	Employer Portion	Employee Portion
Pension	Shenzhen Hukou: 14% Non-Shenzhen Hukou: 13%	8%
Medical	Shenzhen Hukou: 6.2% Non-Shenzhen Hukou: 6.2% / 0.6% / 0.45%	Shenzhen Hukou: 2% Non-Shenzhen Hukou: 2% / 0.2% / 0.1%
Unemployment	1%	0.5%
Work-related Injury	0.14% ~ 1.14%	N/A
Maternity	0.45%	N/A
Housing Fund	5% ~ 12%	5% ~ 12%

NOTES:

1. The contribution base as well as the contribution rates will be usually adjusted every year, so the company need to pay attention to the government announcement to make sure the company is acting in compliance with the current regulations.
2. The contribution portion of housing fund shall be decided by the company, and the employer and employee should remain the same contribution rate

Employer Mandatory Benefit Calculation (Shenzhen, 2018)

Chinese employee – in Shenzhen with monthly salary of RMB 30,000 pre-tax

Social Welfare	Employer Contribution Rate	Min. Base (RMB)	Max. Base (RMB)	Social Welfare Payment
Pension	13%	2,130	22,440	$22,440 * 13\% = 2,917.2$
Medical	6.2%*	4,488	22,440	$22,440 * 6.2\% = 1,391.28$
Unemployment	1%	2,130	2,130	$2,130 * 1\% = 21.3$
Work-Related Injury	1%*	2,130	22,440	$22,440 * 1\% = 224.4$
Maternity	0.45%	2,130	22,440	$22,440 * 0.45\% = 100.98$
Housing Fund	10%*	2,030	37,400	$30,000 * 10\% = 3,000$
Total:				7,655.16

***NOTE:**

1. Medical insurance is calculated using the contribution rate @ **6.2%**
2. Work-related Injury insurance are calculated using the contribution rate @ **1%**
3. Housing Fund is calculated using the contribution rate @ **10%**

Total Cost for Employer

RMB 30,000 + RMB 7,655.16
 = **RMB 37,655.16 (+25.52%)**

Employee Mandatory Benefit Calculation (Shenzhen, 2018)

Chinese employee – in Guangzhou with monthly salary of RMB 30,000 pre-tax

Social Welfare	Employer Contribution Rate	Min. Base (RMB)	Max. Base (RMB)	Social Welfare Payment
Pension	8%	2,130	22,440	$22,440 * 8\% = 1,795.2$
Medical	2%*	4,488	22,440	$22,440 * 2\% = 448.8$
Unemployment	0.5%	2,130	2,130	$2,130 * 0.5\% = 10.65$
Housing Fund	10%*	2,030	37,400	$30,000 * 10\% = 3,000$
Total:				5,254.65

NOTE:

1. Medical insurance is calculated using the contribution rate @ **2%**
2. Housing Fund is calculated using the contribution rate @ **10%**

Social Welfare Paid by Employee
= RMB: 5,254.65 (-17.52%)