



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

Termination Procedure and Severance pay Calculation

Risks and Compliance Strategies in China

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Employment Termination Procedure



Types of Permissible Termination

No.	Type of Termination	Admissible Grounds	Severance	30 Days' Notice
1	During probation period	<ul style="list-style-type: none"> Employee doesn't meet the job requirements stated in job description 	No	No
2	Immediate terminate-Employee's fault	<ul style="list-style-type: none"> Serious violation of company rules Serious loss attributed to employee Giving false information to employer Criminal offense during employment Employee takes up second job, harming first employer 	No	No
3	Immediate terminate-Employer's fault	<ul style="list-style-type: none"> Employer doesn't provide labor protection or labor conditions Employer fails to promptly pay labor remuneration in full amount The employer fails to contribute social insurance Where the rules and system of the employer violate the provisions of laws and regulations others 	Yes-N	No
4	Mutual agreed to terminate	<ul style="list-style-type: none"> Employer request Mutual agreed 	Yes-N	No

Types of Permissible Termination

No.	Type of Termination	Admissible Grounds	Severance	30 Days' Notice
5	Not renewing contract	<ul style="list-style-type: none"> End of contract term 	Yes-N	No
6	With prior notice	<ul style="list-style-type: none"> Employee incompetent for position Employee unable to work after sickness/ injury Job cannot be performed due to change in "Objective circumstances" 	Yes-N or N+1 (one month's in lieu of notice payment)	Yes
7	Terminate upon employee lost qualification	<ul style="list-style-type: none"> Employee retire Employee is dead or declared dead 	No	No
8	Terminate upon employer lost qualification	<ul style="list-style-type: none"> Employer is declared bankrupt pursuant to the law Employer's business license is revoked, or the employer has decided to dissolve prematurely. 	Yes-N	No
9	Mass-layoff (over 10 people or 20% of staff)	<ul style="list-style-type: none"> Company being restructured under Enterprise Bankruptcy law Serious difficulties in production or operations Company changing production method, making staff unnecessary Objective economic situation makes employment impossible 	Yes-N	Yes, to either all staff and/or the labor union. After hearing these parties, submit a report to the local Labor Bureau

Mass Layoff (Procedures)

Requirements

- Company being restructured under Enterprise Bankruptcy law
- Serious difficulties in production or operations.(please note this is not depends on the company, the local government have standards on How the serious difficulties in production is)
- Company changing production method, making staff unnecessary
- Objective economic situation makes employment impossible(such as, relocation, department cancelation etc , which sorts of like the sixth types of the permissible termination)

NOTE: Reporting to government labor administrative authorities is not simply a formality to receive a bureaucratic rubber stamp. Government officials use their discretion to determine whether a company qualifies for economic redundancy and, in some cases, can be quite strict.

Risk Analysis of Types of Permissible Termination

Type of Termination	severance	Risk Analysis	Type of Termination	severance	Risk Analysis
During probation	No	Low risk	Not renewing contract	Yes	Low risk
Immediate terminate- Employee's fault	No	 <ul style="list-style-type: none"> Lack of evidence Company policy does not clear Procedure error Handbook/policy need written confirmed by employee 	With prior notice	Yes	 <ul style="list-style-type: none"> Lack of evidence Procedure error
Immediate terminate- Employer's fault	Yes	<ul style="list-style-type: none"> Employee needs to provide evidences to support their claim. 	Terminate upon lost qualification – employee & employer	No(employee)	Low risk
				Yes(employer)	
Mutual agreed to terminate	Yes	 <ul style="list-style-type: none"> Most common used in practice 	Mass-layoff	Yes	 <ul style="list-style-type: none"> Complicated application procedure

Termination (Special Circumstances)

➤ Employees Not Permitted to Be Terminated

- Employee suspected of having occupational disease(s) and awaiting diagnosis.(we would suggest a healthy check should added into company on boarding process)
- Employee having completely or partially lost labor capability due to occupational diseases or work injury
- Employee still in legal medical treatment period for non-work-related illness/injury
- Employee is pregnant, on maternity leave, or in nursing period
- Employee who has continuously worked for the employer for more than 15 years and is less than five years before retirement

Termination procedure

- **Step 1** Find the reason why you want to terminate the employee and how much severance payment estimated will the company need to pay according to the labor law.
- **Step 2** Find the documents to support your termination decision.
- **Step 3** Negotiate with employee about the labor contract termination decision.
- **Step 4** If the employer needs to pay severance payment, a written form of Mutual Agreement Upon Contract Termination between employer and employee should be signed.

tips: the Agreement shall include the payment details like: severance pay amount, payment of in lieu of notice(if any), untaken annual leave salary(if any) and other information both parties believe need to mentioned on the agreement.
- **Step 5** Release the payment on the appointed date.

Severance pay calculation



Severance Payment(N)

- Company required to pay one month's average compensation (including gross salary, annual bonus, other subsidies) for every year worked for company(N)
 - Average compensation will be calculated based on the average of the past 12 months before termination
 - 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
- Calculation base capped at 3x average local monthly compensation (i.e. current Shenzhen cap for calculation base is RMB 31,938)
- Additional one month's compensation can be paid in lieu of 30 day's notice (N+1).
- An employer which violates the provisions of Labor Law or Labor Contract Law to termination a labor contract shall pay compensation to the worker at two months average compensation as severance fee(2N).
- Company required to pay 2x daily salary for amount of days with untaken leave

Case Study of Severance Pay Calculation

Case Study: An employee has been working for the employer for 5 years and eight months, assuming that his monthly gross salary is RMB 10,000, monthly meal allowance is RMB500, and the employee received 13th month salary on each December and an annual bonus of RMB 20,000 on each January. The employer negotiated with employee on the severance pay upon dismissing the labor contract before the contract expiration.

Scenario 1: If the employer and the employee mutual agreed on the severance pay is N.

Severance pay base: $(\text{RMB } 10,000 * 13 + \text{RMB } 500 * 12 + \text{RMB } 20,000) / 12 = \text{RMB } 13,000$

Service years: 6

Severance pay amount (N): $\text{RMB } 13,000 * 6 = \text{RMB } 78,000$

Scenario 2: If the employer and employee mutual agreed the severance pay is N+1.

Severance pay(N+1): $\text{RMB } 13,000 * 6 + 10,500 = \text{RMB } 88,500$

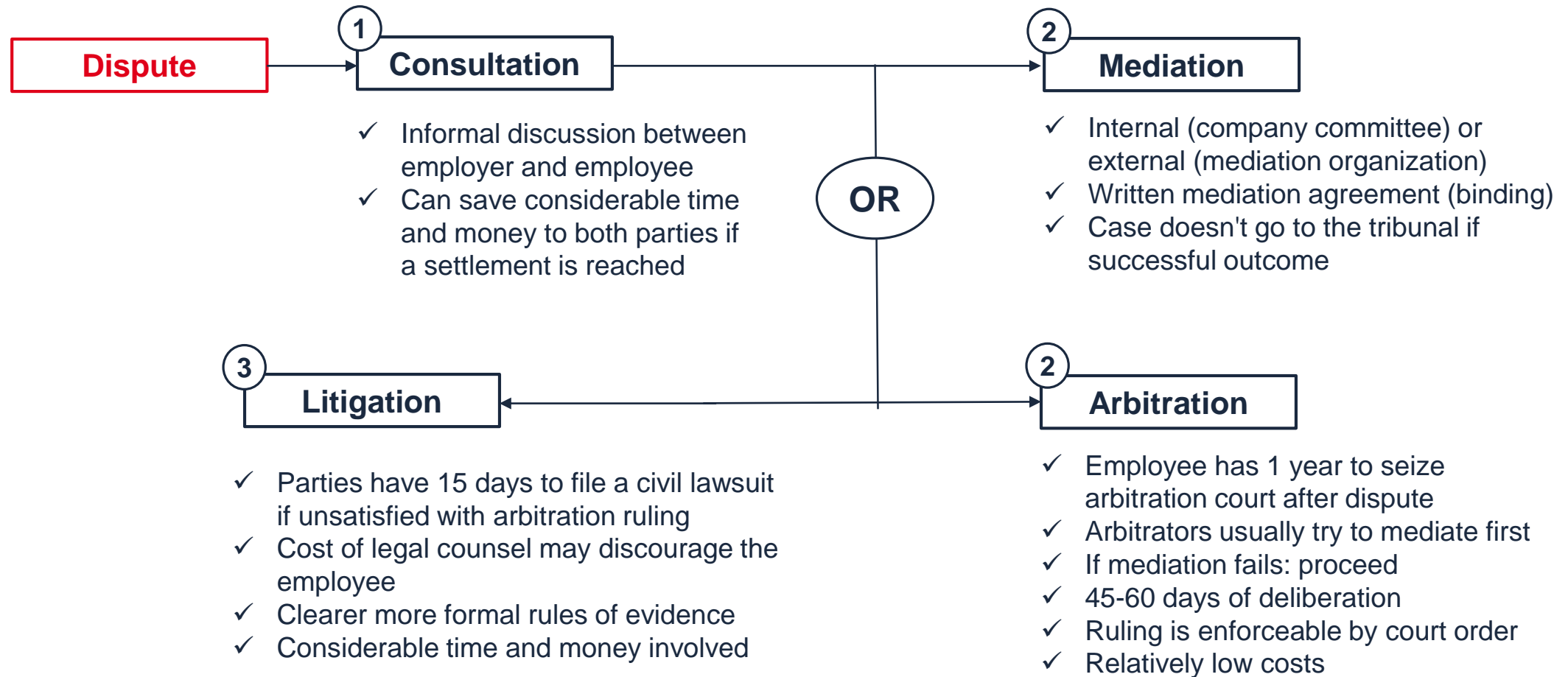
Scenario 3: If the employee is not agreed with the employer upon dismissing and claim for 2n(illegal termination) .

Severance pay(2N): $\text{RMB } 13,000 * 6 * 2 = \text{RMB } 156,000$

Labor Arbitration in China



Labor Arbitration in China

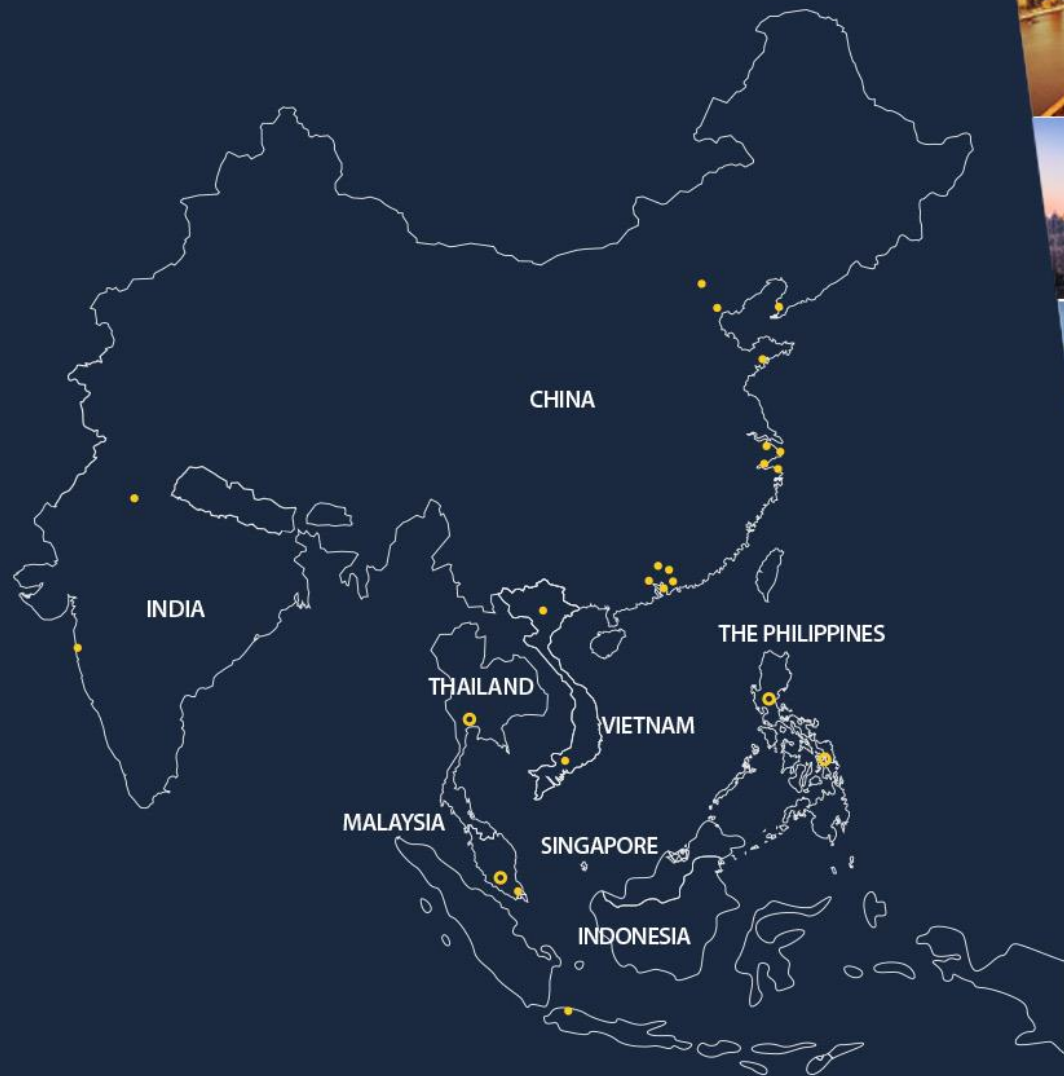


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