## 1. Is a Labour Contract Valid if Concluded in Oral Form?

Related questions: No 5 (Probation Period), No 7 (Form of the Labour Contract)

**Case Study**

The general manager of Company α intends to hire Mr Li, a Chinese citizen, as his secretary.

They have reached, with witnesses, an oral agreement about the salary, the term of the employment (3 years) and the duration of the probation period (6 months), but the general manager, to keep things simple, prefers to wait for the end of the probation period before entering into a formal labour contract with Ms Li.

After 5 months of probation period, the general manager decides to terminate the employment relationship, but Ms Li argues that, because the lack of a written labour contract after 5 months of employment, Company α shall be deemed to have entered into an open-ended labour contract with her.

Does Ms Li's position have legal ground?

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No.

Ms Li is not entitled to enter into an open-ended labour contract with Company α. Although Chinese laws request labour contracts to be entered into in a written form (within 1 month from the commencement of actual employment), the right of the employee to enter into an open-ended labour contract arises only if the absence of a written labour contract last for more than 1 year after the commencement of the actual employment.

Considering that Ms Li has been working for Company α for 5 months, she is just entitled to receive double salary from the second to the fifth month of employment (beside the fact that she may decide to challenge the right of Company α to terminate the employment during the probation period).

**Legal Framework**[3]

According to Articles 6 and 7 of the Labour Contract Law Implementing Provisions, if an employer fails to enter into a written labour contract with an employee within 1 month from the commencement of the actual employment, the employer shall bear the following legal consequences:

(1) If the written labour contract is entered into after 1 month but before 1 year from the commencement of actual employment, the employer shall pay double salary to the employee from the second month of employment until

3 For a full English translation of the Labour Contract Law Implementing Provisions, see Appendix 1.

(i) the conclusion of the written labour contract or (ii) the termination of the employment relationship; and

(2) If the written labour contract is entered into after 1 year from the commencement of actual employment, the employer shall be deemed to have entered into an open-ended labour contract with the employee starting from the expiration of such 1-year period. In addition, the double monthly salary as mentioned above shall still apply for the period of 11 months as from the second month of employment.

If, despite the offer by the employer to the employee to enter into a written labour contract, such labour contract is not concluded within the first month of employment, the employer has the right to terminate the relevant labour relationship after paying the employee for his/her actual working time (see Article 5 of the Labour Contract Law Implementing Provisions).

### Relevant Laws, Regulations and Judicial Decisions

- Labour Contract Law Implementing Provisions: Articles 5, 6, 7.
- *Qingdao Hai Fu Rubber Products Co Ltd v Liu Qiang*, Qingdao Intermediate Court, 12 April 2011.[4]

4 There had been no written labour contract between the employer and the employee from 15 July 2002, until 18 January 2010 (when the employee's labour contract was terminated). The employee claimed for double salary for 11 months as from 1 February 2008 (as the Labour Contract came into effect on 1 January 2008 and it introduced the rules on double salary). The court supported the employee's claim and further confirmed that the labour relationship as from 1 January 2009 was an open-term one.

## 2. Can a Branch of a Chinese Company Directly Enter into a Labour Contract with an Employee?

Related questions: No 4 (Branch), No 12, 15, 31 (Arbitration/Litigation)

### Case Study

Company α is a manufacturing company registered in Guangzhou, with a commercial branch in Beijing.

Ms Ma, a Chinese citizen, is a sales manager working for the Beijing branch of Company α, based on a labour contract entered into between her and the branch.

Ms Ma, after a tense discussion with the branch manager about a delayed payment of a huge amount of commission allegedly due to Ms Ma, writes to Company α to inform the latter that she intends to start a legal action against Company α (1) claiming that her employment by the branch (instead of by Company α) is illegal, considering that the branch is not an independent legal person from Company α, and (2) asking for the immediate payment of the due amount.

Is Ms Ma approach correct?

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No.

Although a branch is not an independent legal person from the relevant mother company, it is possible for a branch to directly enter into labour contracts with its employees, considering that the branch has its own business licence issued by the locally competent Administration for Industry and Commerce.

Therefore Ms Ma cannot directly take action against Company α, but she shall take action against the branch instead, and cannot claim that the branch had no right to enter into the labour contract agreement with her.

If Ms Ma wins the case, and the Beijing branch of Company α is not capable to fulfil its relevant payment obligation, Ms Ma can ask Company α to pay her the due amount, considering that a branch (differently from a subsidiary) is not a limited liability entity, and therefore the branch's mother company shall be liable for all the branch's obligations.

### Legal Framework[5]

According to Article 4 of Labour Contract Law Implementing Provisions, all entities (including branches and subsidiaries of Chinese companies) that have been granted a business licence by the locally competent Administration for Industry and Commerce are entitled to directly enter into labour contracts with their employees

5 For a full English translation of the Labour Contract Law Implementing Provisions, see Appendix 1.

(as well as other agreements, within their business scope, such as lease agreements, commercial contracts, etc).

In case of branches, the relevant mother company is liable for all the branches' obligation towards third parties.

Subsidiaries are, instead, entities with a limited liability nature, therefore the subsidiary's mother company is not liable for the subsidiary's own obligation towards third parties.

### Relevant Laws, Regulations and Judicial Decisions

- Labour Contract Law Implementing Provisions: Article 4.
- *Yan v Hisense Kelon Electrical Holdings Co Ltd*, Shanghai No. 2 Intermediate Court, 19 August 2011.[6]

6 The employee entered into the labour contract with the Shanghai branch of the company. Although the dispute was about the early termination of the labour contract, it can show that the branch is allowed to enter into a labour contract by itself with the employee.

## 3. Can a Foreign Company Not Registered in China Enter into a Labour Contract with an Employee?

### Case Study

Company α, based in San Francisco, intends to enter into a labour contract (regulated by Chinese law) with Mr Chen, a Chinese citizen, resident in China, for him to handle all the preparation activities in China related to Company β, the subsidiary that Company α is planning to establish in Shanghai.

The intention of the parties is to terminate the above mentioned labour contract, and to have Company β entering into a new labour contract with Mr Chen, as soon as Company β is established.

Is the above approach correct?

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No.

Company α, as a foreign company without any presence (ie registration at the Administration for Industry of Commerce) in China, is not allowed to establish employment relationships with individuals in China.

Company α and Mr Chen may, for instance, enter into a consulting agreement, providing that, *inter alia*, as soon as Company β is established Company α shall cause Company β to enter into a labour contract with Mr Chen.

### Legal Framework[7]

According to Article 2 of the Labour Contract Law and Article 2 of the Labour Law, both the Labour Contract Law and the Labour Law only covers the employment relationships established between entities registered in China.

Therefore, the relationship established between foreign entities without a presence in China (ie not registered at the local Administration for Industry and Commerce) and Chinese citizens is not recognised as a labour relationship.

Considering that the establishment of legal entities in China by foreign companies is quite time consuming (it usually takes at least a couple of months), it is a common need of foreign investors to find a way to regulate their relationships with the selected individuals in China before they are allowed to employ them through the newly established legal entity.

A usual way to proceed in such regard, is for the foreign company to establish a consulting relationship with the relevant individual, with the agreement that a labour contract will be entered into between such individual and the soon-to-be established Chinese entity, as soon as the latter is recorded at the competent bureau of the Administration for Industry and Commerce.

7 For a full English translation of the Labour Contract Law and the Labour Law, see Appendix 1.

## 11. What are the Rules Concerning Statutory Leave?

**Case Study**

Mr Bo, a 30-years old Chinese citizen, has been an employee of Company α, registered in Shanghai, for almost 5 years.

In his labour contract there is no reference to the number of days of annual paid leave is entitled to.

Mr Bo applies for 15 days of leave to Company α's HR manager, Ms Liu, explaining that he is leaving for honey-moon with his newly wed wife in 2-weeks time, and that he intends to use for this all his days of annual paid leave for the current year, together with his marriage leave.

Ms Liu rejects Mr Bo's request, arguing that (1) Mr Bo should have applied earlier for such leave, and (2) 15 days are in any case too many.

Does Ms Liu have the right to reject Mr Bo's request for leave?

No.

As for the timing of the application for the leave, Mr Bo's request is legitimate, considering that (1) Company α's internal rules and regulation do not provide anything on such regard, and (2) Ms Liu has accepted requests for leave in the past for similar duration and with similar advanced notice.

As for the duration of the requested leave, Mr Bo is entitled to 15 days of leave because he can cumulate his annual paid leave (5 days, considering he has been working for more than 1 year for Company α), together with his marriage leave (3 days of standard marriage leave, plus 7 days for late marriage leave).

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### Legal Framework[31]

The major leave that are granted to employees by Chinese national laws and local regulations are the following:

(1) Annual paid leave;
(2) Leave during the statutory medical treatment period;
(3) Maternity and paternity leave; and
(4) Marriage leave.

Other leave, mainly regulated at local level, include abortion leave, maternity related medical inspection leave, pre-delivery leave, nursing leave after confinement and leave for birth-control operation.

31 For a full English translation of the Provisions on Employees' Annual Paid Leave, see Appendix 1.

The employer's internal rules and regulations may provide for more detailed procedures for the application and the enjoyment of leaves. In case of absence of such procedures, the employer has to respect the internal practice (if any) and not to treat differently employees in the same or similar situations.

### (1) Annual Paid Leave

According to Article 2 of the Provisions on Employees Annual Paid Leave, an employee who has continuously worked for no less than 1 year for the same employer is entitled to annual paid leave. Once the employee is entitled to annual paid leave, the minimum amount of days for the annual paid leave is determined based on the employee's cumulative working period (regardless whether for the current employer or not).[32]

### (2) Leave During the Statutory Medical Treatment Period

Employees are entitled to a medical treatment period (MTP), if necessary, in case of sickness or non-work related injury.

According to Article 3 of the Provisions on Employees' Medical Treatment Period for Sickness or Non-work Related Injuries, the duration of the MTP may range from 3 months to 24 months depending on the total cumulative working term and the working term of the employee for the current employer.[33]

The calculation of MTP and other detailed implementation rules on MTP may vary locally.

32 Cumulative working period between 1 year and less than 10 years: minimum 5 days of annual paid leave; cumulative working period between 10 years and less than 20 years: minimum 10 days of annual paid leave; cumulative working period of no less than 20 years: minimum 15 days of annual paid leave.

33 Provisions on Employees' Medical Treatment Period for Sickness or Non-work Related Injuries (企业职工患病或非因工负伤医疗期规定), which were promulgated on 1 December 1994 (Order of the Ministry of Human Resources and Social Security No. 479/1994):

| Total working term | Working term for the current employer | Duration of MTP |
|---|---|---|
| Less than 10 years | Less than 5 years | 3 months within a 6-months employment |
| Less than 10 years | No less than 5 years | 6 months within a 12-months employment |
| No less than 10 years | Less than 5 years | 6 months within a 12-months employment |
| No less than 10 years | No less than 5 years but less than 10 years | 9 months within a 15-months employment |
| No less than 10 years | No less than 10 years but less than 15 years | 12 months within a 18-months employment |
| No less than 10 years | No less than 15 years but less than 20 years | 18 months within a 24-months employment |
| No less than 10 years | No less than 20 years | 24 months within a 30-months employment |



In Shanghai, for instance, the minimum duration of the MTP is determined as follows:

(1) A cumulative 3-month MTP is granted for the first and the second full years of employment with the current employer; and

(2) An additional 1 month is granted for each full year after the second year of employment with the same employer (being 4-months MTP for the third year of employment, 5-months MTP for the fourth year of employment and so on), provided that the total MTP does not exceed 24 months.[34]

In Guangzhou, MTP may range from 3 months to 36 months depending on the total cumulative working term and the working term of the employee for the current employer.[35]

In Beijing, Tianjin, Chongqing, Suzhou and Shenzhen the same way of calculation of the MTP as that stipulated by national law applies.

According to Article 59 of the Opinion of Ministry of Human Resources and Social Security on Several Issues regarding the Implementation of the Labour Law[36] and the relevant jurisprudence, employers shall pay the salary to the relevant

34 Circular of Shanghai Municipality on the Promulgation of Provisions on Medical Treatment Period Standard of the Employees' Sickness or Non-work-related Injuries in the course of Performance of Labour Contracts (上海市人民政府关于发布《关于本市劳动者在履行劳动合同期间患病或者非因工负伤的医疗期标准的规定》的通知), which was adopted on 30 April 2002.

35 Notice of Guangzhou City regarding Circulation of Implementation Measures on Medical Treatment Period for Employee for Sickness and Non-work Related Injuries (关于印发《广州市职工患病或非因工负伤医疗期管理实施办法》的通知), which was adopted on 30 September 1998:

| Total working term | Working term for the current employer | Duration of MTP |
|---|---|---|
| No more than 10 years | No more than 5 years | 3 months within a 6-months employment |
| No more than 10 years | More than 5 years | 6 months within a 12-months employment |
| More than 10 years | No more than 5 years | 6 months within a 12-months employment |
| More than 10 years | More than 5 years but no more than 10 years | 9 months within a 15-months employment |
| More than 10 years | More than 10 years but no more than 15 years | 12 months within a 18-months employment |
| More than 10 years | More than 15 years but no more than 20 years | 18 months within a 24-months employment |
| More than 10 years | More than 20 years but no more than 30 years | 24 months within a 30-months employment |
| More than 10 years | More than 30 years | 36 months within a 42-months employment |

36 Opinion of Ministry of Human Resources and Social Security on Several Issues regarding Implementation of the Labour Law (关于贯彻执行〈中华人民共和国劳动法〉若干问题的意见), which was adopted by the Ministry of Human Resources and Social Security on 4 August 1995 (Order of the Ministry of Human Resources and Social Security No. 309/1995).

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employee during the MTP. The amount of such salary may be less than the full salary of the employee, as agreed upon by the employee and the employer or set out in the local regulations or the Employees' Handbook of the employer, but cannot be less than 80% of the minimum local salary.

### (3) Maternity and Paternity Leave

According to Article 7 of the Special Provisions on Female Employees' Labour Protection, employers are required to grant a minimum of 98 days of maternity leave, broken down as follows:

(1) 15 days leave before the expected date for delivery; and
(2) 83 days leave after the expected date for delivery.

In cases involving dystocia, an additional 15 days' leave must be granted. In multi-fetal cases, an additional 15 days' leave for each child that is born must be granted.

If an employee suffers a miscarriage within the first 4 months of her pregnancy, a maternity leave of 15 days shall be granted; if an employee suffers a miscarriage after 4 months, the minimum maternity leave entitlement is 42 days.[37]

In cases of late childbirth, an additional period of maternity leave must be granted. The definition of "late childbirth" and the consequent amount of additional leave that is granted is stipulated by local regulations.[38]

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37 "Female employees shall be entitled to 98 days of maternity leave, 15 days of which can be taken before the delivery. In the event of dystocia, an additional 15 days maternity leave shall be granted. In multi-fetal cases, an additional 15 days maternity leave shall be granted for each additional infant (...)".

Article 7 of the Special Provisions on Female Employees' Labour Protection (see footnote No. 17 above).

38 Beijing: if a married female is at least 24 years old when she gives birth to her first child, this is deemed as late childbirth, resulting in an obligation of the employer to grant an extra 30 days of maternity leave (Provisions of Beijing Municipality on Population and Family Planning (北京市人口与计划生育条例), which were adopted on 18 July 2003 and amended on 21 February 2014);

Shanghai: if a married female is at least 24 years old when she gives birth to her first child, this is deemed as late childbirth, resulting in an obligation of the employer to grant an extra 30 days of maternity leave (Provisions of Shanghai Municipality on Population and Family Planning (上海市人口与计划生育条例), which were adopted on 31 December 2003 and amended on 25 February 2014);

Tianjin: if a married female is at least 24 years old when she gives birth to her first child, this is deemed as late childbirth, resulting in an obligation of the employer to grant an extra 30 days of maternity leave (Provisions of Tianjin Municipality on Population and Family Planning (天津市人口与计划生育条例), which were adopted on 11 July 2003);

Chongqing: if a married female is at least 24 years old when she gives birth to her first child, this is deemed as late childbirth, resulting in an obligation of the employer to grant an extra 20 working days of maternity leave (Provisions of Chongqing Municipality on Population and Family Planning (重庆市人口与计划生育条例), which were adopted on 29 September 2005 and amended on 26 March 2014);

Suzhou: if a female is at least 24 years old when she gives birth to her first child, or if a female gets pregnant and gives birth to her first child after she gets married at the age of at least 23, this is deemed as late childbirth, resulting in an obligation of the employer to grant an extra 30 days of maternity leave (Provisions of Suzhou City on Population and Family Planning (苏州市人口与计划生育办法), which were adopted on 9 October 2005 and amended on 28 March 2014); and

Shenzhen and Guangzhou: if a married female is at least 23 years old when she gives birth to her first child, this is deemed as late childbirth, resulting in an obligation of the employer to grant an extra 15 days of maternity leave (Provisions of Guangdong Province on Population and Family Planning (广东省人口与计划生育条例), which were adopted on 2 February 1980 and amended on 27 Match 2014).

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According to Article 56 of the Social Insurance Law[39] the maternity insurance fund pool covers the subsidy for the female employees during the maternity leave, the amount of which shall be calculated on the basis of the average employees' monthly salary paid by the relevant of the employer during the previous year (the "Employer's Average Salary"). The Social Insurance Law does not provide for the details regarding the calculation of such subsidy, which are contained in the relevant local regulations.[40]

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39 For a full English translation of the Social Insurance Law, see Appendix 1.

40 Beijing: the employer shall pay full salary to the employee during her maternity leave. The employer may then apply to the competent labour authority for the subsidy to compensate, wholly or partially (depending on the amount of the employer's salary), the employer for its payment of the salary during the maternity leave. The calculation of such subsidy is based on the following formula:

(Employer's Average Salary (with a minimum of 60% and a maximum of 3 times the average gross monthly salary in Beijing during the previous year) / 30) x (number of days of the maternity leave of the employee)

If the amount of such subsidy exceeds the employee's salary, the employer shall pay such exceeding amount to the employee (Notice of the Human Resources and Social Security Bureau of Beijing Municipality on Related Issues regarding Adjustment of Maternity Insurance Policy for Employees in the Municipality (北京市人力资源和社会保障局关于调整本市职工生育保险政策有关问题的通知), which was issued on 12 December 2011);

Shanghai: the calculation of the subsidy is based on the following formula:

(Employer's Average Salary (with a minimum of 60% and a maximum of 3 times the average employees' gross monthly salary in Shanghai during the previous year) / 30) x (number of days of the maternity leave of the employee)

If the employee's salary exceeds the Employer's Average Salary and hence the amount of the subsidy. In such case, the employer shall pay the employee the balance between the employee's salary and the subsidy (Notice of the Shanghai Municipal Government on Adjustment of the Provisions regarding the Maternity Insurance Benefits of Female Employees in the Municipality for the Implementation of the Special Provisions on Female Employees Labour Protection (上海市人民政府关于贯彻实施《女职工劳动保护特别规定》调整本市女职工生育保险待遇有关规定的通知), which was issued on 19 January 2013);

Tianjin: the employer shall pay full salary to the employee during her maternity leave. The employer may then apply to the competent labour authority for the subsidy to compensate, wholly or partially (depending on the amount of the employer's salary), the employer for its payment of the salary during the maternity leave. The calculation of such subsidy is based on the following formula:

(Employer's Average Salary (with a minimum of 60% and a maximum of 3 times the average employees' gross monthly salary in Tianjin during the previous year) / 30.4) x (number of days of the maternity leave of the employee)

If the amount of such subsidy exceeds the employee's salary, the employer shall pay such exceeding amount to the employee (Notice of the Human Resources and Social Security Bureau of Tianjin Municipality on Several Issues regarding Implementation of the Maternity Insurance Provisions for Employees in Tianjin Municipality (关于实施《天津市城镇职工生育保险规定》有关问题的通知), which was issued on 19 August 2005; Salary Payment Provisions of Tianjin Municipality (天津市工资支付规定), which was issued on 22 December 2003; Notice of the Human Resources and Social Security Bureau of Tianjin Municipality on Adjustment of Maternity Subsidy under Maternity Insurance for Employees (天津市人力资源和社会保障局关于调整城镇职工生育保险生育津贴计发标准的通知), which was issued on 21 September 2012);

Chongqing: during the maternity leave, the employer is not required to pay any salary to the employee (regardless the amount of the maternity subsidy). The employees are entitled to receive maternity subsidy directly from the maternity insurance fund pool. The calculation of such subsidy is based on the following formula:

(employee's average monthly salary for the previous year / 30) x (number of days of the maternity leave of the employee)

## 22. Under What Circumstances Can an Employer Ask an Employee to Pay Damages for Breach of Labour Contract?

### Case Study

Company α, registered in Beijing, hires Mr Huang, a Chinese citizen, as its plant manager, for an initial term of 3 years.

According to the relevant labour contract, Mr Huang undertakes to keep confidential all the information related to Company α's manufacturing know-how, and not to work for any of Company α's competitors in China for 2 years after the termination, for whatsoever cause, of its labour contract.

The contract also provides that 30% of Mr Huang's salary has to be considered as consideration for the above mentioned non-competition obligation.

It is also agreed by the parties in the labour contract that Mr Huang shall pay RMB 1,000,000 in case of violation of its non-competition obligation, and RMB 500,000 in case he terminates the labour contract before the end of the second year of employment.

At the end of the first year of employment Mr Huang resigns, informing the general manager of Company α that he will join Company α's largest competitor in China.

Does Company α have a valid ground for asking Mr Huang to pay RMB 1,500,000 as penalty for its breach of both the above mentioned obligations?

No.

First of all, Mr Huang's the non-competition obligation is invalid because the consideration for such obligation must be paid by the employer after the termination of the labour contract, cannot be part of the employee's salary.

Second, with reference to the penalty in case of early termination of the labour contract, the law expressly provides that the employer can impose penalties to its employees only in very specific circumstances (as described in section "Legal Framework" here below), and the early termination as described in the case above is not one of those.

### Legal Framework[106]

Article 25 of the Labour Contract Law provides that employers may agree upon the liquidated damages to be liable by the employee for breaching of the labour contract only in the circumstances described at Articles 22 and 23 of said law.

106 For a full English translation of the Labour Contract Law, see Appendix 1.

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(1) According to Article 22 of the Labour Contract Law, if an employer provides technical training to its employees, it is allowed for the parties of the relevant labour contract to insert therein a provision according to which the employee shall work for the employer for a minimum period of time (to be decided by the parties), failure of which, the employee shall pay liquidated damages to the employer.
The maximum amount of such liquidated damages is the total amount spent by the employer on the relevant training, and the actual amount of the liquidated damages to be paid by the employee shall be calculated in relation to the time the employee was still supposed to work for the employer (i.e., if the parties agreed that the employee should have worked for 2 years after the completion of the training, but he/she left the employer after 1 year from such date, the employee shall pay half of the agreed valid liquidated damages);
(2) According to article 23 of the Labour Contract Law, the parties of a labour contract can insert therein a confidentiality provision, to protect the employer's business secrets and intellectual property rights.

In such case, the parties of the labour contract may further agree on a non-competition provision, according to which the employee undertakes not to compete with the employer during the term of the relevant labour contract and for a maximum of 2 years (Article 24 of the Labour Contract Law) after its termination.

The precise scope, geographical limitation and duration of the non-competition obligation shall be decided by the parties of the labour contract.

The employer shall pay a monthly compensation for the non-competition obligation to the employee during the non-competition period after the termination of the labour contract.

The amount of such compensation is not specified in any law at national level.

Based on an Interpretation of the Supreme Court, if the parties have not agreed on the specific amount for the compensation, the arbitration commission/court shall apply an amount equal to 30% of the average monthly salary of the employee in the 12 months prior to the termination or the minimum local salary (whichever is higher).[107]

It is not yet clear if the above-mentioned Interpretation of the Supreme Court shall prevail or not on the local rules that several Chinese cities have adopted to determine the amount of the non-competition compensation.

For instance:

(1) Beijing: in case there was no initial agreement on the amount of compensation between the parties (nor any agreement can be reached by the parties subsequently), the compensation shall be between 20% and 60% of the employee's average salary for the last year of employment (the court will determine the

107 4th Interpretation of the Supreme Court on Several Issues regarding the Application of the Law for Hearing of Labour Disputes (最高人民法院关于审理劳动争议案件适用法律若干问题的解释(四), which was adopted on 18 January 2013.



amount within such range, depending on the employment position and other factors on a case-by-case basis)[108];
(2) Shanghai: in case there was no initial agreement on the amount of compensation between the parties (nor any agreement can be reached by the parties subsequently), the compensation shall be between 20% and 50% of the employee's monthly salary before termination (the court will determine the amount within such range, depending on the employment position and other factors on a case-by-case basis)[109];
(3) Suzhou: the amount of compensation shall be no less than one-third of the employee's average salary of for the 12 months before termination[110]; and
(4) Shenzhen (Special Economic Area): the amount of compensation shall be no less than one-half of the employee's average salary of for the 12 months before termination.[111]

No local rules on this matter are currently applicable in Tianjin, Chongqing or Guangzhou.

The employer and the employee may agree upon the liquidated damages to be paid by the employee in case of breach of such non-competition obligation. There is no specific statutory restriction on the amount of such liquidated damages.

According to the relevant jurisprudence, civil principles regarding liquidated damages shall apply, i.e., such amount shall be reasonable and if such amount is much higher than the actual damages suffered by the employer, the arbitration commission/court may decide to reduce the amount upon the employee's claim, and if it is much lower than the actual damages suffered by the employer, the arbitration commission/court may decide to increase it upon the employer's claim.

Chinese laws keep silent on the validity of the non-competition agreement if it lacks the territory and/or duration. According to the jurisprudence, the non-competition agreement shall be reasonable and shall not infringe on the employees' rights in employment.

Therefore, if the non-competition agreement is too broad to the arbitration commission/court (e.g. due to its lack of the territory and duration), the arbitration commission/court may decide that such agreement is invalid.

### Relevant Laws, Regulations and Judicial Decisions

- 4th Interpretation of the Supreme Court on Several Issues regarding the Application of the Law for Hearing of Labour Disputes.

108 Memorandum of the Beijing High Court on the Application of Law for Labour Disputes (北京市高院关于劳动争议案件法律适用问题研讨会会议纪要), which was adopted on 17 August 2009.
109 Opinion of Shanghai High Court on Several Issues on the Application of the Labour Contract Law (上海高院关于适用《劳动合同法》若干问题的意见), which was adopted on 3 March 2009.
110 Provisions of Jiangsu Province on Labour Contract (江苏省劳动合同条例), which were adopted on 25 October 2003, and amended on 15 January 2013.
111 Provisions of Shenzhen Special Economic Area on Protection of Enterprises' Technology Secrets (深圳经济特区企业技术秘密保护条例), which were adopted on 3 November 1995 and amended on 27 May 2009.

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- Labour Contract Law: Articles 22, 23, 24, 25.
- Memorandum of the Beijing High Court on the Application of Law for Labour Disputes.
- Opinion of the Shanghai High Court on Several Issues on the Application of the Labour Contract Law.
- Provisions of Jiangsu Province on Labour Contract.
- Provisions of Shenzhen Special Economic Area on Protection of Enterprises' Technology Secrets.
- Case *Zhao Shi Sheng v Shen Yang Hao Yuan Furniture Co Ltd*, Shenyang (Liaoning Province) Intermediate Court, 25 September 2014.[112]

112 The employee was required to comply with the non-competition obligation according to the relevant agreement with the employer, which, however, did not include the amount of the compensation. The employer failed to pay any compensation but the employee had performed the non-competition obligation. The court ordered the employer to pay the compensation calculated at 30% of the employee's average salary for 12 months prior to the termination in accordance with the 4th Interpretation of the Supreme Court on Several Issues regarding the Application of the Law for Hearing of Labour Disputes (see footnote No. 107 above).

CHAPTER XIV

# TERMINATION OF A LABOUR CONTRACT

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## 23. Can an Employer Terminate a Female Employee's Labour Contract During her Breast-feeding Period?

Related Questions/Answers: No 19 (Breast-Feeding Period), No 20, 24, 25 (Crimes)

**Case Study**

Ms Wang, a Chinese citizen, employee of the purchasing department of Company α, registered in Shenzhen, is enjoying her breast-feeding period.[113]

The general manager of Company α had for some time the suspicion that Ms Wang put in place a scheme according to which the suppliers handled by Ms Wang had to pay to her 5% of the price of the goods sold by them to Company α.

Finally, the general manager of Company α manages to collect enough evidence about such scheme and reports the issue to the competent public security bureau, which starts an official criminal investigation on Ms Wang. Upon the investigation and hearing, the crime was confirmed and a suspended sentence of detention was imposed by the court against Ms Wang.

The general manager of Company α notifies Ms Wang the intention of the Company to terminate her labour contract with immediate effect.

Ms Wang replies mentioning that Company α has no right to terminate the labour contract because she is currently enjoying her breast-feeding period.

Is Ms Wang's argument grounded?

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No.

Company α has the right to terminate the labour contract with Ms Wang with immediate effect because of the criminal liabilities have been imposed on her.

The fact that Ms Wang is currently enjoying her breast-feeding period does not constitute an obstacle for such termination.

### Legal Framework[114]

According to Article 42 of the Labour Contract Law, an employer cannot terminate a labour contract on the ground of Articles 40 or 41 of said law if the employee:

(1) Is engaging in jobs exposing him/her to occupational disease hazards and has not undergone an occupational health check-up before he/she leaves his/her

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113 According to Article 63 of the Labour Law, the breast-feeding period last until the child is 1 year old. During such period the employer shall not arrange the employee to work at the labour intensity of 3rd level or above (Article 4 of the Special Provisions on Female Employees' Labour Protection and its Appendix (Scope of Jobs Prohibited for Female Employees), see footnote No. 14 above), arrange her to work at night or overtime. Furthermore, according to Article 42 of the Labour Contract Law, the employer may not terminate, on the grounds of Articles 40 and 41 of said law, a labour contract of an employee who is enjoying her breast-feeding period.

114 For a full English translation of the Labour Contract Law and the Labour Law, see Appendix 1.

position, or is suspected of having suffered from an occupational disease and is under diagnosis or medical observation;

(2) Has been confirmed to have lost or partially lost his/her working capacity due to an occupational disease or a work-related injury during his/her employment with the employer;

(3) Is sick or suffered from a non-work-related injury and is still within the statutory medical treatment period;

(4) Is a female who is in her pregnancy, confinement or breast-feeding period;

(5) Has been working for the employer continuously for not less than 15 years and is less than 5 years away from his/her legal retirement age; or

(6) Other circumstances under which an employer shall not terminate the labour contract according to laws or administrative regulations.

Based on the above, if the ground for unilateral termination by the employer is not Article 40 or Article 41 of the Labour Contract Law, but Article 39 instead (e.g. if the criminal liabilities have been imposed on the employee), employers have the right to terminate the labour contract even if the relevant employees is under any of the conditions described at article 42 of the Labour Contract Law.

According to Article 45 of the Labour Contract Law, if the term of a labour contract expires during any of the circumstances described in Article 42 of the same law, such term shall be extended until the disappearance of the relevant circumstance, except for the circumstance under Article 42(2), in which case the provisions on work-related injuries shall apply.

### Relevant Laws, Regulations and Judicial Decisions

- Labour Contract Law: Articles 39, 40, 41, 42, 42(2), 45.
- Labour Law: Article 63.
- *Tai Zhou Jiang Yan District Kai Tai Rural Power Co Ltd v Xu Ya Ping*, Taizhou (Jiangsu Province) Intermediate Court, 4 September 2014.[115]

115 The employee, who was pregnant, failed to handle the approval formality for sick leave and was absent from work. Such action was in serious violation of the employer's internal rules and regulations. The employer dismissed the employee based on such serious violation. The court decided that, although female employees are protected during their pregnant period, according to Labour Contract Law, dismissal is allowed if they seriously violate the internal rules and regulations of the employer.

## 24. Can an Employee Be Fired if Involved in Bribery?

Related Questions/Answers: No 20, 23, 25 (Crimes)

### Case Study

Mr Zhang, a Chinese citizen, head of the sales department of Company α, registered in Guangzhou, gave detailed instruction to all the members of the department on how to bribe the purchasing managers of Company α's main customers, so to ensure a larger quantity of orders from the latter.

Mr Li, a member of the sales department, sent an email to Mr Zhang, to inform him about his sales volume for the previous quarter (mentioning the amount of the relevant kickbacks as well), and by mistake he copies such email to Mr Marlow as well, a US citizen, general manager and legal representative of Company α.

Mr Marlow decides to immediately fire Mr Zhang and all the members of the sales department, for engaging in bribery activities.

Is Mr Marlow allowed to do so?

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It depends.

If the bribery activities performed by Mr Zhang and his team represent (because of the amount involved, etc.) a criminal offence, and criminal liabilities have been imposed on him, Company α may fire Mr Zhang with immediate effect, without paying him any severance pay.

If such bribery activities do not represent a criminal offence, Company α may fire Mr Zhang if it is so provided in Company α's internal rules and regulations.

The other members of Company α's sales department, unless differently provided by Company α's internal rules and regulations, cannot be fired because of the above mentioned bribery activities (independently from the amount involved, etc.) because they had performed such activities under the instructions and supervision of Mr Zhang, therefore they may not held any criminal liability on such regard.

### Legal Framework[116]

According to Article 39(6) of the Labour Contract Law, if an employee conducts bribery activities and as a result criminal liabilities have been imposed on the employee, the employer may terminate the relevant contract immediately without paying severance pay.

If such activities do not represent a criminal offence, the employee cannot be fired unless it is so provided by the employer's internal rules and regulations (where the employer may for instance determine the amount of bribery which shall be deemed to be serious violation of such internal rules and regulations, so to entitle

116 For a full English translation of the Labour Contract Law, see Appendix 1.

the employer to unilaterally terminate the relevant labour contract) (Article 39(2) of the Labour Contract Law).

If the bribery activities are made under the instruction of the employer (through the general manager, the head of the relevant department, the legal representative or other person in charge) for the benefit of the employer, then the relevant criminal liabilities will be pursued against the person providing the relevant instruction.

In such latter case, whether the employee who is requested to perform bribery activities may be fired or not depends mainly on the content of the employer's internal rules and regulations.

### Relevant Laws, Regulations and Judicial Decisions

- Labour Contract Law: Article 39, 39(2), 39(6).
- *Shanghai XX International Travel Agency Co Ltd v Fan*, Shanghai (Putuo District) Court, 20 December 2012.[117]

117 The employee helped a friend to obtain a visa without charging service fees for the employer, but received money privately from such friend. According to the employer's internal rules and regulations, such action shall be deemed to be in serious violation of the employer's internal rules and regulation. Hence, the employer fired the employee based such legal ground. The court supported the employer's decision.

## 25. What are the Formalities Concerning Termination of a Labour Contract?

Related Questions/Answers: No 4, 13 (Housing Fund, Social Contributions), No 17 (Trade Unions), No 18, 26 (Internal Rules and Regulations), No 20, 23, 24 (Crimes), No 30 (Severance Pay), No 31 (Arbitration/Litigation) and Appendix 2

### Case Study

Mr Liu, the general manager of Company α (registered in Suzhou), orally informs Ms Chen, his secretary, that she is fired with immediate effect because he has clear evidence she has been stealing stuff from his office, which is a circumstance seriously violating Company α's internal rules and regulations. Mr Liu arranges for Ms Chen's due salary to be paid to her.

Ms Chen immediately finds another job. Three weeks later, she contacts Mr Liu to urge him to transfer her social insurance and housing fund accounts to the relevant social insurance/housing fund bureau of her residential place or her new employer, and to inform him that she is going to start a labour arbitration against Company α for invalid termination of her labour contract, from both the substantial (no criminal liabilities pursued against her) and procedural point of view.

Does Ms Chen's arguments, with specific reference to the procedural aspects of the termination, have legal grounds?

No.

Considering the reason for termination of the labour contract is the serious violation of Company α 's internal rules and regulations, Article 39 of the Labour Contract Law does not require the latter to notify in writing the unilateral termination of the contract (although it is always recommendable for the employer to send a written notice to the employee).

According to Article 50 of the Labour Contract Law, upon the termination, Company α shall issue to Ms Chen a termination certification (a sheet indicating the details of the employment relationship and of its termination) and shall handle the transfer of Ms Chen's social insurance and housing fund accounts to the relevant social insurance/housing fund bureau of her residential place or her new employer within 15 days from the termination date.

### Legal Framework[118]

It is always recommendable for the employer to try to reach an agreement with the employee for the termination of the relevant labour contract, to avoid the risk of

118 For a full English translation of the Labour Contract Law, see Appendix 1.

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legal actions that may be subsequently taken by the employee against the employer.[119]

If such agreement is reached, the parties have just to arrange the internal hand over, and the employer has to prepare the termination certification (indicating the details of the employment relationship and of its termination), to pay the last salary and the severance pay (if due) to the employee, and to handle the transfer of the employee's social insurance and housing fund accounts within 15 days from the termination date (Article 50 of the Labour Contract Law).

If no agreement is reached on the termination of the labour contract, the employer shall inform the trade union (if existing) about the termination (Article 43 of the Labour Contract Law), and shall send to a written termination notice to the employee, indicating the reasons of the termination and the termination date (for termination based on Article 40 of the Labour Contract Law).

According to the 4th Interpretation of the Supreme Court on Several Issues regarding the Application of the Law for Hearing of Labour Disputes,[120] if the employer has the legal grounds for unilateral termination of a labour contract but fails to notify the trade union (if existing) in advance, the court may support the employee's request of double severance pay (as one of the remedies that the employees are entitled to in case of illegal termination by the employer[121]), unless the employer proceeds with the above mentioned notification before the litigation is raised.

In the termination notice, the employer may indicate that the employee is prohibited to enter the office after a certain date, but in such case the employer shall either allow the employee to go to the office to collect his/her personal stuff or promptly have such stuff delivered to the employee.

The rest of the procedure (hand over, termination sheet, payment of the due amount to the employee (if any) and transfer of the employee's social insurance and housing fund accounts) shall be handled as indicated here above.

### Relevant Laws, Regulations and Judicial Decisions

- 4th Interpretation of the Supreme Court on Several Issues regarding the Application of the Law for Hearing of Labour Disputes.
- Labour Contract Law: Articles 39, 40, 43, 50.
- *Chou Guo Cai v Jiangsu Ya Ke Technology Company Limited by Shares*, Yixing (Jiangsu Province) Court, 3 November 2011.[122]

119 In case of termination of the labour contract by agreement, the employer shall pay to the employee the due severance pay (if any). The clause of the termination agreement providing that the employee renounce to all of part of his/her due severance pay would very likely be null and void.

120 See footnote No. 107 above.

121 See Question No. 31.

122 The employee resigned and handled the hand-over formalities with the employer. The latter failed to issue the termination certification and to transfer the social insurance accounts and housing fund accounts for the employee within 15 days upon the termination. The court ordered the employer to complete these termination formalities within 10 days upon effectiveness of the judgment.

## 26. What is the Role of a Company's Internal Rules and Regulations Concerning the Early Termination of a Labour Contract?

Related Questions/Answers: No 18, 25 (Internal Rules and Regulations)

### Case Study

Company α is a relatively small size company registered in Shanghai.

One day, one of the most important wholesale client of Company α starts a legal action against the latter asking for RMB 300,000 of compensation because some of the products delivered by Company α were defective. The client won the legal action and Company α had to pay the requested amount.

After an internal investigation, Mr Wang, the general manager of Company α, finds out that the relevant products were defective because of a clear mistake of Mr Liu, a Chinese citizen, Company α's manager in charge of the products' quality control.

Mr Wang decides to terminate the employment relation with Mr Liu for "serious dereliction of duties (...) which has caused serious damages to the employer" (as provided by Article 39 of the Labour Contract Law), in connection with the fact that Company α's internal rules and regulations specify that "serious damages" means any damage exceeding RMB 200,000.

Mr Liu starts a legal action against Company α, arguing that (1) an amount of RMB 300,000 cannot be considered as a "serious damage" to Company α, and (2) in any case, he was not aware of the existence of Company α's internal rules and regulations.

Does Mr Liu have good chances to win the case against Company α?

Probably not, assuming that the procedure related to the preparation of the internal rules and regulations were duly followed by Company α.

According to a consolidated jurisprudence, employers have the right to specify in their internal rules and regulations the general content of the mandatory circumstances for early termination of a labour contract, as long as such specification is deemed reasonable.

Article 39 of the Labour Contract Law provides that the employer may unilaterally terminate an employee's labour contract if such employee conducts dereliction of duties that has caused serious damages to the employer. There is no statutory definition on the specific action of dereliction of duties or on "serious damages". According to the judicial practice, this mainly depends on the internal rules and regulations of the employer.

It seems quite likely that an amount exceeding RMB 200,000 may be considered a "serious damage", also considering the relatively small size of Company α.

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# Labour Contract Law Implementing Provisions

(中华人民共和国劳动合同法实施条例)

Adopted by the State Council on 3 September 2008
(Order No. 535/2008)


Chapter I General Provisions *(Articles 1 to 3)*
Chapter II Formation of Labor Contracts *(Articles 4 to 17)*
Chapter III Termination of Labor Contracts *(Articles 18 to 27)*
Chapter IV Special Provisions on Labor Dispatch *(Articles 28 to 32)*
Chapter V Legal Liabilities *(Articles 33 to 35)*
Chapter VI Supplementary Provisions *(Articles 36 to 38)*


## Chapter I
## General Provisions

**Article 1** These Provisions are formulated to thoroughly implement the Labor Contract Law of the People's Republic of China (hereinafter referred to as "Labor Contract Law").

**Article 2** People's governments at various levels and relevant departments of the people's governments at or above the county level including the labor administrative departments as well as trade unions shall adopt proper measures to facilitate the thorough implementation of the Labor Contract Law and promote a harmonious labor relationship.

**Article 3** Partnerships and foundations such as accounting firms and law firms that are lawfully established shall be the employing units provided in the Labor Contract Law.

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## Chapter II
## Formation of Labor Contracts

**Article 4** Where a branch established by an employing unit prescribed in the Labor Contract Law obtains its business license or registration certificate in accordance with the law, the branch may enter into a labor contract with its employees in the capacity of an employing unit. Where the business license or registration certificate has not yet been obtained in accordance with the law, the branch may enter into a labor contract with its employees upon the authorization of the employing unit.

**Article 5** Where an employee fails to enter into a written labor contract with an employing unit upon written notice by the employing unit within one month as from commencement of the employment, the employing unit shall terminate the labor relationship with such employee in writing without economic compensation, provided that labor the labor remuneration shall be made to such employee on the basis of the actual working period.

**Article 6** Where an employing unit fails to enter into a written labor contract with an employee within one month but less than one year as from commencement of the employment, the employing unit shall pay two times of monthly salary to such employee in accordance with Article 82 of the Labor Contract Law, and enter into a labor contract with the employee. Where the employee fails to conclude a written labor contract with the employing unit, the employing unit may terminate the labor relationship with the employee in writing and pay economic compensation in accordance with Article 47 of the Labor Contract Law.

For the purposes of the preceding paragraph, the commencement date for the calculation of two times of monthly salary to employees by employing units shall be the day following the end of the first month as from commencement of the employment till the day preceding the conclusion of a written labor contract.

**Article 7** Where an employing unit fails to enter into a written labor contract with an employee for a period of one year or above as from commencement of the employment, the employing unit shall pay two times of monthly salary to the employee from the day following the end of the first month as from commencement of the employment till the day preceding one year of employment in accordance with Article 82 of the Labor Contract Law, and a non-fixed term labor contract shall be deemed to have been entered into with the employee upon one year as from commencement of the employment, and the employing unit shall enter into a written labor contract with the employee immediately.

**Article 8** The roster of employees as prescribed in Article 7 of the Labor Contract Law shall include the name, gender, identity card number, household registration address and current residential address, contact method, mode of use of labor services, commencement date of the employment and the expiry of the labor contract.

**Article 9** The commencement date for 10 consecutive years of employment as prescribed in Paragraph 2 of Article 14 of the Labor Contract Law shall be calculated from the date of commencement of the employment by the employing unit, including the years of employment prior to the implementation of the Labor Contract Law.

**Article 10** Where an employee is assigned to a new employing unit other than the original employing unit for a reason not attributable to the employee, the years of employment with the original employing unit shall be calculated together with that with the new employing unit. If the original employing unit has paid economic compensation to the employee, the years of employment with the original employing unit may not be counted into that with the new employing unit when calculating the years of employment for economic compensation upon termination of labor contracts in accordance with the law.

**Article 11** Unless a consensus to the contrary is reached between an employee and an employing unit, otherwise when the employee proposes the conclusion of a non-fixed term labor contract in accordance with Paragraph Two of Article 14 of the Labor Contract Law, the employing unit shall conclude a non-fixed term labor contract with the employee. The contents of the labor contract shall be determined on the principles of legality, fairness and equality, consensus through negotiation and faithfulness and creditworthiness. Where a consensus cannot be reached through negotiation, reference shall be made to Article 18 of the Labor Contract Law.



**Article 12** Where the people's governments at various levels and relevant departments of local people's governments at or above the county level provide public welfare positions with job allowance and social insurance allowance for placement of personnel with difficulty in finding jobs, the provisions on non-fixed term labor contract and payment of economic compensation prescribed in the Labor Contract Law shall not apply to such labor contracts.

**Article 13** Employing units and employees may not agree on other conditions for termination of labor contract other than those prescribed in Article 44 of the Labor Contract Law.

**Article 14** Where the place of performance of a labor contract is different from the place of registration of the employing unit, the minimum salary standard, labor protection, labor conditions, occupational hazard protection and the average local monthly salary standard of the employees of the previous year shall refer to the provisions of the place of performance of the labor contract. Where the relevant standard of the place of registration of the employing unit is more favorable than that of the place of performance of the labor contract and the employing unit and the employee agree on the application of the provisions of the place of registration of the employing unit, such agreement shall prevail.

**Article 15** The salary of employees in the probation period must not be lower than 80% of the salary of the lowest rank of the same position in the same unit or 80% of the salary agreed in the labor contract and the minimum salary standard at the place of the employing unit.

**Article 16** The training expenses prescribed in Paragraph two of Article 22 of the Labor Contract Law include the fees for the professional training paid by the employing unit for the employees, the business trip expenses linked with the training period and other direct expenses associated with the training of such employees.

**Article 17** Where a labor contract expires but the service period agreed between the employing unit and the employee in accordance with Article 22 of the Labor Contract Law has not expired, the term of the labor contract shall be extended to the expiry of the service period. Where there is an agreement otherwise, such agreement shall prevail.

## Chapter III
## Termination of Labor Contracts

**Article 18** Under any of the following circumstances, an employee may terminate a fixed term labor contract, a non-fixed term labor contract or a labor contract,

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the service period of which is the completion of a certain task in accordance with the requirements and procedures prescribed in the Labor Contract Law:

(1) Where the employee and the employing unit has reached a consensus through negotiation;
(2) Where the employee notifies the employing unit with a written prior notice of 30 days;
(3) Where the employee notifies the employing unit with three days' prior notice within the probation period;
(4) The employing unit fails to provide labor protection or labor requirements as agreed in the labor contract;
(5) The employing unit fails to make full payment of labor remuneration in a timely manner;
(6) The employing unit fails to pay social insurance premiums for employees in accordance with the law;
(7) The rules and systems of the employing unit fail to comply with the provisions of laws and regulations and damage the rights and interests of employees;
(8) The employing unit forces the employee to sign or amend the labor contract in contrary to the true intention of the employee by deceptive or coercive means or by way of taking advantage of the employees;
(9) The employing unit excludes its statutory responsibility or the rights of employees in the labor contract;
(10) The employing unit violates the mandatory provisions of laws and administrative regulations;
(11) The employing unit uses coercive means such as violence, threat or illegal restriction of personal freedom to force employees to work;
(12) The employing unit violates rules and directives and forces employees to work under risks which endangers the personal safety of employees; or
(13) Other circumstances that allow termination of labor contract as stipulated by laws and administrative regulations.

**Article 19** Under any of the following circumstances, an employer may terminate a fixed term labor contract, a non-fixed term labor contract or a labor contract, the service period of which is the completion of a certain task, in accordance with the requirements and procedures prescribed in the Labor Contract Law:

(1) Where the employee and the employing unit has reached a consensus through negotiation;
(2) The employee is proved not to satisfy the employment requirements during probation period;
(3) The employee is in serious violation of the rules and systems of the employing unit;
(4) The employee seriously derelicts duty and conducts graft which has caused significant harm to the employing unit;
(5) The employee establishes labor relationship with another employing unit and this has seriously affected the completion of tasks of the employee for the employing unit (seeking for termination), or fails to rectify upon notification by the employing unit (seeking for termination);
(6) The employing unit forces the employee to sign or amend the labor contract in contrary to the true intention of the employee by deceptive, coercive means or taking advantage of the employee;
(7) Criminal liability is pursued against the employee in accordance with the law;
(8) The employee suffers from illness or non-work related injuries, and cannot engage in the same jobs after completion of the medical treatment period nor other jobs as adjusted by the employing unit;
(9) The employee is not competent for the jobs and remains incompetent after training or adjustment of job position;
(10) There is a significant change to the objective circumstances on which the labor contract is based, which leads to the labor contract unable to be performed, and after negotiation between the employing unit and the employee, no agreement can be reached on the change of contents of the labor contract;
(11) The employing unit is restructuring in accordance with the Enterprise Bankruptcy Law;
(12) There is serious difficulty in the production and operation of the employing unit;
(13) There is a change of production, significant technological innovation or adjustment of operational mode of the employing unit and employees are made redundant even after the change of labor contract; or
(14) Other circumstances where there is a significant change to the objective economic circumstances on which the labor contract is based, which leads to the labor contract unable to be performed.

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**Article 20** Where an employing unit chooses the method of making one month of salary in lieu of one month's notice period to terminate the labor contract, such salary in lieu shall be determined in accordance with the salary standard of the employee of the previous month.

**Article 21** Where an employee reaches the statutory retirement age, the labor contract terminates.

**Article 22** Upon the termination of a labor contract, the service period of which is the completion of a certain task, the employing unit shall pay economic compensation to the employee in accordance with Article 47 of the Labor Contract Law.

**Article 23** Where the employing unit lawfully terminates the labor contract in work-related injury cases, the employing unit shall, in addition to paying economic compensation in accordance with Article 47 of the Labor Contract Law, pay one-off work-related injury medical treatment subsidy and disability employment subsidy in accordance with the work-related insurance regulations of the State.

**Article 24** The proof of termination of a labor contract issued by the employing unit shall state the term of the labor contract, the date of termination of the labor contract, the position and the years of service with the employing unit.