

New Chinese Labor Contract Law - Tips from the Expert

from Max A. Brändli, Interim Manager with broad experience in China

Since January 1, 2008 the new employment law (Labor Contract Law) has been introduced. This new Labor Contract Law does not replace the existing Labor Law, but it will supplement it. This new Labor Contract Law can be regarded as a modern law and protects both the employees and the employer better than in the past.

The new **Labor Contract Law** regulates the work conditions in more detail. Amongst many other changes it will be more difficult for employers to terminate the Employment Contracts of long-term employees. Also the allowable probationary periods have been shortened. The maximum enforceable post employment non-competition term was reduced to two years.

It is my opinion that the new Labor Contract Law has fewer ramifications to foreign companies than to Chinese owned companies. We must wait and see now how this new Labor Contract Law will be enforced.

An important part of this new law is the **Employee Manual**. The Employee Manual makes part of the Employment Contract. A detailed description of the rights and duties in the manual, which protects the employees and also the employer, is of paramount importance. In case of conflicts a well established Employee Manual provides a much improved legal security for the employer

The importance of the Employee Manual is given by the fact, that each new Manual or changes of an existing Manual must undergo a democratic process within the company.

This means that all employees must always be consulted before the new or updated Manual becomes into effect. This can be done by informing all employees and to take into consideration the remarks of each individual. Today the legal certainty as to the extent of co-determination is not yet fully established. If the employees of a company have elected an employee representative body it is this body who will be the negotiation partner. In a union organized company, this role will be delegated to the union representatives.



For newly established companies it is therefore very important that such an Employee Manual exists before the first employee signs his/her Employment Contract.

Based on the New Labor Contract law Sanet has created a range of Employment Contract templates. The templates, which are listed hereafter, have been fine-tuned with Chinese lawyers and are in both the English and the Mandarin language.

- Employment contract for Managers (with non-competition clause)
- Employment contract for Sales Managers (with non-competition clause)
- Employment contract for employees (without non-competition clause)
- Employment contract for employees with shift clause
- Non-competition contract
- Employee Manual

These contract templates can be ordered thru Sanet for EUR 150 for the package of all Employment Contracts and EUR 300 for the Employee Manual. The ordering party will receive the templates as word document under the provision of the copyright for Sanet. The use of the templates are explicitly restricted to the buyer, any duplication and/or sale is prohibited unless approved by Sanet.

As the central government and /or the provincial governments may at any time issue changes or new regulations, it is recommended, to briefly verify with a lawyer individual contracts, which are based on this templates.

The mandatory attachments to an Employee Contract are the Employee Manual and a **Job Description**. Care should be taken that the Job Description is not too restrictive. I made the experience that a restrictive Job Description was cited by employees in order to refuse certain additional work which was asked from the superior from time to time. I also strongly recommend that a company establishes a written **Regulation of Authority**. This regulation can also be integrated as an attachment to the Employment Contract. In any case it is important that the Regulation of Authority is known and available to all employees, otherwise the company can be faced with expensive problems in case of conflict.

It is o be noted that the Chinese Labor Law does not make a difference between an executive and a low-level employee. This also applies to overtime. That is way the templates for managers and sales managers include under paragraph 5.1 provisions for flexible work hours. However in order to enforce flexible hours it is mandatory to establish a list of all employees with flexible hours which will then have to be sent to the local authorities for approval.



If desired, Sanet can provide the English version with comments of the new Labor Contract Law.