

China Law & Practice

Don't get caught in an employee dispute

Chinese growing more litigious

Date: 06 May 2010

Foreign companies in China must be very careful during recruitment to minimise the risk of future litigation from employees, says counsel.

"Companies should always have a contract with a probation period," advises Fiona Loughery, the Head of Simmons & Simmons' China employment practice. "When the employee successfully passes probation, then management can choose to continue. They then have a second opportunity to assess before entering into a second contract, usually with a longer duration."

A [report](#) last week highlighted the explosion of employment legal disputes as the Chinese become more savvy about enforcing their rights through trials or arbitration.

Loughery believes that companies are not powerless to defend against legal troubles with Chinese employees. If they have carefully drafted labour-related documentation, a solid and updated knowledge of PRC employment regulations, and apply efforts to comply with these, they can have a reasonable expectation of a fair approach by both the local courts and the Beijing Foreign Enterprise Human Resource Service Co., she said.

Difficulties to enforce rights exist due to the lack of transparency in the system and inaccessibility of court judgements. These result in uncertainty.

"The limits on the publication of the court decisions and access to legal reasoning delay the education of lawyers, clients and employees who are involved in the process," said Loughery.

Although the *PRC Employment Contract Law* (中华人民共和国劳动合同法) is heavily weighted in favour of employees, China's labour courts and arbitrators are becoming more accustomed to dealing with litigations between former employees and non-acquiescent employers.

See also:

[Employment: Unions increase the pressure](#) 09 Dec 2009

[How to deal with a PRC labour union](#) 09 Oct 2009



[Home](#) | [Sitemap](#) | [Archive](#) | [Advertising](#) | [Reprint](#) | [Contact Us](#) | [FAQ](#) | [Asia Law & Practice](#) | [Terms and Conditions](#) | [Privacy Policy](#) |

© Euromoney Institutional Investor (Jersey) Ltd 2010. All material subject to strictly enforced copyright laws.