

China Insight



Upcoming Challenges for HR Management in 2021

Dear Sir or Madam,

Please find enclosed our newsletter on upcoming challenges for HR management in 2021.

Kind regards,
CMS, China

2020 was a very special year. The entire world suffered from the COVID-19 pandemic, which is still going on in many countries and has also not completely ended yet in China. In 2021, for HR management, Chinese companies will continue facing challenges arising from COVID-19, economic pressure and enforcement of labor law.

Challenges from COVID-19

- The first and direct challenge is safety of employees and workplace.

Under PRC labor law, companies must take all necessary measures to provide a safe and healthy working environment for their employees. During COVID-19, companies must continue to keep their employees and workplaces safe.

For such purpose, companies must be always alert to the development of COVID-19. If any new infections are found in related areas, companies shall take measures not only preventing the infected persons or suspected infected persons from entering the workplace, but also reducing the risks of the employees entering high risk or middle risk areas where infections may occur. Possible measures include checking the physical temperatures, health codes and traveling codes of the employees, timely notifying the employees who have business trip scheduled to risky areas to cancel their trips, arranging the employees to take nucleic acid tests if necessary, etc. In particular, companies may wish to remind their employees of potential risks, if any employees need to travel during the Christmas and new year holidays.

- Another challenge directly arising from COVID-19 is foreigners' working in China.

Since the end of March 2020, the Chinese government has temporality suspended the entry of foreigners into China. Many foreigners are stranded abroad. This brings difficulties to the business of foreign invested companies. Some foreigners are not able to come back to work; some projects are not be able to proceed; some employees' work permits and residence permits have expired during the period of being abroad; employees, even after coming back, are subject to quarantine measures for 14 days. Due to the Christmas, some foreigners staying in China now intend to go back to their home countries. All the above issues have impact on companies.

To be on the safe side, companies may wish to pay close attention to potential changes of the Chinese government's policies on border entry and work permits and residence permits of foreigners. Companies may

have to prepare for the situations that some foreign employees might not be able to come back or might not be able to renew their work permits.

- Another significant and influential challenge brought by COVID-19 is the companies' data security.

Due to COVID-19, work-from-home or work with flexibility becomes very common. With the introduction of mobile equipment and different kinds of apps, employees can work anywhere and become important data exchange nodes. For data security, from HR management's perspective, companies shall take suitable measures to protect their data, ensure that the employees use the data in a legal way and keep the data safe in their daily work.

Such measures include but are not limited to setting up rules on confidentiality such as providing confidentiality obligations for employees, formulating rules on use of IT system and electronic equipment. Examples are whether WeChat can be used for work purposes and whether the employees can use their private electronic equipment for work. Companies can also set up labor disciplines for breach of the rules. If any employee does not comply with his/her obligations, the company may impose punishment on the employee. Companies can also take measures for individual employees such as signing specific confidentiality agreements and imposing non-competition obligations on the employees. These measures will help companies to ensure their data security especially the security of their trade secrets.

Challenges from economic pressure

In addition to the impact of COVID-19, in 2021, the Chinese economy will continue facing challenges from the China-US conflicts. Many companies will seek to cut costs and streamline their operations due to economic pressure. As a result, the employment contracts of employees may need to be changed or terminated because of business restructuring or re-organization.

- Change of employment contract

According to PRC labor law, in general, the change of an employment contract, especially the change of work position, salary or work location, is subject to the written consent of the employee. Only under some special circumstances, the change of employment contract can be made by the company unilaterally. For example, in addition to the statutory circumstances of incompetence and illness, the company may, due to its business needs, unilaterally change the work position of an employee as long as such change is necessary, reasonable and feasible without reducing the salary of the employee. During the period of COVID-19, a company can reduce the salaries of the employees upon consulting with the employees in a collective way. A company can change the work location of the employees if the change is due to business needs and will not substantially affect the performance of the employment contracts by the employees, for example, the new work place is nearby or the company provides some indemnifying measures for the move.

- Lay off employees

In China, an employment contract can only be terminated in case one of the statutory termination reasons is fulfilled. Due to the complicated consultation and filing procedures, mass lay-off of more than 20 employees or although less than 20 but more than 10% of the employees are difficult.

In case of business restructuring or reorganization, many companies lay off employees based on the statutory reason of change of objective circumstances. However, the objective circumstances as defined by law are only limited to force majeure, relocation, merger or acquisition. Companies have risks when laying off employees due to the reason of change of the objective circumstances, if a specific circumstance of the company is not defined as the objective circumstances by statutory law. Further procedure-wise, for such lay-off, the company must follow the statutory procedures, that is, a company can only terminate the employment contract with the employee by giving a 30 days' prior notice or pay one monthly salary in lieu after consulting with the employee about the change of the employment contract and no agreement is reached. The company shall also pay statutory severance payments to the employee.

Due to the high risks when conducting unilateral dismissals, many companies choose to seek mutual termination agreements with the employees by paying compensation. How to reach an agreement with the employees with a reasonable compensation amount is also a challenge for companies. Therefore, relevant strategies and action plans should be prepared in advance in case laying off employees is necessary.

Challenges from enforcement of labor law

- Implementation of social insurance law

In Beijing, since summer 2020, HR agencies are not allowed to pay social insurance contributions for employees residing in Beijing but hired by the companies which are not registered in Beijing. This policy affected many companies hiring people there without setting up branches. In 2021, other regions might follow these policies so that many companies may have to adjust their social insurance arrangement for employees who want to pay social insurance contributions at the locations where they reside although their employer is not registered there.

Since November 2020, more than 15 provinces announced that the social insurance contributions would be levied by the tax authorities instead of the social insurance funds. Since the tax authorities are holding the remuneration information of the employees, therefore, in the future, companies are unlikely to be able to pay social insurance premiums lower than the statutory requirements.

Another change which might occur in 2021 refers to the Shanghai local policies on foreigners' participating in the social insurance scheme. At the State level, foreigners working in China are required to participate in the social insurance scheme since 2011. However, according to the Shanghai local regulations which are still applicable until now, foreign employees are not mandatorily required to participate in the social insurance scheme but may participate in pension, medical insurance and work-related injury insurance based on the agreement with their company. Recently the Shanghai local government set an expiry date on this local regulation, i.e. 15 August 2021. When this local regulation expires next year, Shanghai might change its policies and require foreign employees to participate in the social insurance scheme.

- Implementation of labor dispatch policies

According to the *PRC Labor Contract Law* amended in 2013, dispatched employees can only be used on temporary, auxiliary and substituting positions, and the percentage of using dispatched employees shall not surpass 10% of the total staff. Further, using dispatched employees in the name of outsourcing service are strictly prohibited. In case of breach, relevant administrative punishments with penalties ranging from RMB 5,000 to 10,000 for each person may be imposed on the company.

In the past, the above-mentioned statutory law was not strictly implemented. However, recently Guangdong Province announced a guideline specifically emphasizing on the implementation of statutory provisions on labor dispatch. Similar actions might be taken by other provinces. We suggest that companies should closely monitor the attitude of the government at their locations and duly make some adjustments, if there is any incompliance in using dispatched employees.

Looking forward to 2021, which will be another year full of challenges. I wish you a peaceful and healthy New Year!

In case you have questions or for further information, please contact:



Jeanette Yu

Partner

Head of Employment & Pensions

CMS, China

T + 86 21 6289 6363

E jeanette.yu@cmslegal.cn

About CMS, China

关于 CMS, 中国

CMS is one of the top 10 global law firms. With more than 4,800 professional legal and tax advisors in over 70 offices in more than 40 countries, we advise clients on both global and local matters and provide pragmatic and commercial advice.

CMS, China has been advising clients on doing business in China for several decades. As one of the top international law firms in China, we are able to support international companies and Chinese enterprises on all their legal needs through our full service offering. We advise in the areas of M&A, corporate restructuring, FDI, distribution and commercial, competition, compliance, employment, banking and finance, insurance, real estate and construction, technology licenses, IP registration and enforcement, dispute resolution as well as tax and customs.


Our team of legal experts are from China, Germany and the UK, and have an in - depth knowledge and understanding in many industrial sectors such as automotive, manufacturing, machinery and equipment, life sciences and healthcare, energy, banking & finance and TMC. We focus on serving the needs of our clients and on providing them with solution driven and business-oriented advice.

作为全球最大的法律与税务服务机构之一，CMS 通过旗下遍布于 40 多个国家超过 70 个办公室的 4,800 多名律师，提供覆盖全球及本土化的商业可行性解决方案。

如今，CMS 在中国服务客户已有数十年的历史。作为中国最大的外资律所代表处之一，CMS，中国专注于并购、公司重组、外商直接投资、分销和商法、竞争法、合规、劳动法、银行和金融、保险、房地产和建筑、技术许可、知识产权注册与执行、争议解决及税务和海关等各个领域，为国际与中国公司提供全方位的法律咨询服务。


我们的顾问团队由来自中国、德国和英国的专家组成，对汽车、制造、机械设备、生命科学和医疗保健、能源、银行金融以及技术、传媒与通讯等行业领域有着全面深入的了解。我们注重为客户提供实际有效的咨询和解决方案，以帮助客户达到既定商业目标。

 3108 Plaza 66, Tower 2, 1266 Nanjing Road West, Shanghai 200040 P.R.China
上海市南京西路 1266 号恒隆广场 2 期 3108 室

 Phone/ 电话: + 86 21 6289 6363

Fax/ 传真: + 86 21 6289 0731

 Web/ 网址: <https://cms.law/en/chn/>

 Email/ 电邮: info@cmslegal.cn



Welcome to follow our WeChat where you will find the updated legal insights and news.

欢迎扫码关注我们的微信公众号，在这里您可以获取最新的法律资讯和新闻。