

# PRC Labour Law - Bitesize



25 February 2010

## **Is termination at-will allowed under the PRC law?**

Employees can terminate their employment on 30 days notice. This is reduced to three days notice during the probationary period.

However, PRC law does not grant the same right to employers. Employers can only terminate an employee's employment on specified grounds set out in the law (e.g., mutual termination, summary dismissal, termination with notice and termination by reason of redundancy).

## **Is termination with notice (or payment in lieu) allowed under the PRC law?**

An employer can only terminate a contract with 30 days notice (or one month's salary in lieu of such notice) in one of the following circumstances:

- On the expiry of a medical treatment period for an illness or non-work related injury, and the employee remains incapable of performing the original duties or the duties of another available job.
- The employee is not competent to perform the job and remains so after training or being moved to another job.
- The employee's labour contract can no longer be performed due to a major change in the objective circumstances which were relied upon when the contract was concluded, which renders the contract unperformable and the parties cannot reach an agreement to vary the contract after consultation.

Economic compensation (of one month's wages for each year of service) is payable in each of the above termination scenarios.

## **Am I obliged to inform any third party (e.g. the union and/or the government) or obtain the consent of such third party for termination of employment?**

Any unilateral termination of employment initiated by the employer (i.e., summary dismissal and termination with notice) must be notified to the union. While the union may have some comments on such termination, the employer is not obliged to pay heed to such comments. If there is no union established in the company, the employer may be required to notify a union at a higher level (for example the district union) as per local practice.

In terms of termination by reason of redundancy, the employer is required to explain the circumstances to its union or to all employees 30 days in advance. This is to enable the employees and the union to express their opinion. In addition, the employer should report the workforce reduction plan to the local labour bureau for their consent.

An employer does not need to inform any third party, nor obtain any third party's consent in respect of a mutual termination.

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