3 Easy Processes to Prevent Labour Law Risks in Foreign Companies

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Labour law in China is complex. And, the employees of young generation in China are more aggressive towards their employers than those of elder generations. These factors together bring more and more challenges for employers. That's one of the main reasons that number of labour disputes cases has been increasing over the last decade.

Complex situation requires sophisticated professionals. However, HR profession in China is still in early developing stage. Many HR experts will agree on this statement. This factor's impact in our context of this article is that many HR professionals make mistakes in setting up and managing the processes handling disagreements arising between employer and employees.

The second issue actually can easily be handled by optimizing the daily HR management processes. And this is particularly true for foreign companies, given that foreign companies usually are willing to comply with law than not. Their only issue is how to make sure their HR specialists know the flaws in their management processes before they fail their cases before the tribunals or courts.

In this article, I will discuss 3 easy processes to prevent labour law risks between employer and their employees. The 3 ways need to be deployed in different stage of labour relationship -- from hiring to separating.

Quality Control over HR work by Authoritative Information

Very often we have found HR departments proposed to their boss wrong process to handle crisis with staff, or wrong formula or wrong variations to calculate compensations, overtime working fee, and the like.

This is understandable, insomuch that HR usually is not a trained legal expert while labour law is complex. However, this is only one reason. Another reason is that a lot of Chinese HR professionals are not so keen to do legal research. Or maybe they are just too busy to spend time on doing research by themselves. They prefer someone else quickly tell them something so they can bring to their boss. Thus, they like to call around to ask people they know, and nowadays ask the people, who they even don't know at all, in the free online communities.

We have conducted a research on how Chinese HR solve their daily issues.The research is to observe the behaviors of HR professionals in HR special online communities (QQ group, Wechat group, online forum and the like) . It's found that Chinese HRs are really nice and willing to help -- when a HR asks a question on how to handle labour law crisis in the community, many will step in to counsel. However, the counseling activity usually will end up with something like "we do this way" "I think such a problem can be solved this way". Very few will point out the legal basis for their advice.

Surely this is not a professional way to work on labour legal issues. An international company should not allow this to happen. Solution to a legal issue should not based on oral advice given by a person you have no idea about their expertise. This is risky to the company.

Managers of international companies should be aware of such culture in the infant stage Chinese HR profession, and find a way to manage this. The way to manage this is to have a process to control quality over your HR department's proposal -- to make sure the proposed solutions are in line with the China labour law.

The quality control process don't have to be very complicated. In fact it can be very simple: ask your HR department to always come to you with source of authoritative information (a judgment, a law, checklist prepared by an expert etc) when they hand in proposal of solutions to issues that might have labour law risk. If you have got a legal counsel, ask your HR to talk to the counsel who then can help; and if you do not have a legal counsel (this is usually the case for small and medium sized companies), they can go to specialized database for that.

Moderated Negotiation

Current China law has put negotiation and mediation as a formal solution to solve labour disputes. And it is put before the arbitration and litigation process. That means negotiation (A mediation is another kind of negotiation) is a favoured solution to labour disputes from the law's point of view, because this will save the society's cost.

Personally, I believe employers should also favour negotiation against arbitration and litigation as labour disputes resolution, simply because this will save time and cost for employer, let alone employer brand reputation. However, in reality, very few employers have seriously considered this solution. If you ask them why, The answer usually is -- hard to reach agreement, employees usually ask for more than the law does.

This actually is a trust issue. An employee, more often than not, is concerned that his employer is fooling him/her around. And this mindset is understandable, given that the employee and the employer are in disagreement in the context, the trust between them has already been in question. The solution to this trust crisis is to have a mutually trusted party to moderate the negotiation with the employee in question.

So who could be a mutually trusted party? Certainly not HR department, because HR is hired by employer. Some may think of a lawyer (if the employer has). This is arguably little better than in-house HR even if cost is not taken into account, because often that the lawyer is paid by the employer, too.

Then, who can be perceived as trusted party by both employee and employer? In other words, who can be perceived as having neutral stance in the negotiation course?

One is the mediation organizations. Another one, thanks to nowadays' technology, are the virtual labour law counsel services online. Laws and judgments published in such solutions will be able to demonstrate from a neutral perspective how the law or judges will say in the same or similar case. And usually in such solutions there are calculators help calculate compensations in the context.

Normally, by doing the above, the employee and employer will be much easier than before to reach agreement, because both of them now know the results they will get if they go to the court. So the employer will just need to pay what they should, and some generous employer will pay slightly a bit more than they should, and the employee will become really happy because he/she know he/she got treated fairly, or even nicer, than going to the court.

Like the idea? Then do not forget to put in your company's written policy or labour contract

a clause that *negotiation* is a required dispute resolution process in advance of arbitration. With this clause, your employee's case will not be accepted by tribunal or court before you finish your process of negotiation .

Written Agreement on Communications Channels

What do you mean communications channels? Don't you mean email address, mailing address etc? We have these, so this is not an interesting topic any longer. You may murmur on coming to the subtitle of this section

Yes, those are necessary. But I am not talking about the corporate email address, corporate mailing address. Still, I am not only talking about the emergency contact that an international company usually will do, driven by their headquarter experience. What I'm talking about is a *private contact* a staff formally registered with the company and clearly agreed in written as a default contact .

Why this is important? For, analysis on labour cases in recent years has shown a clear phenomenon that a new type of risk has been arising: an unhappy staff of young generation may simply disappear without neither notice to employer, nor cooperation to complete the procedure of separating. Your HR department will soon take actions. And your HR department has got a lot of instrument to handle the case. That's for sure. However, before the instruments are allowed to be deployed, your HR department have to reach the staff and give him/her a notice with something like "come to clarify situation, or seen as resignation".

In this situation, to prevent risks, you need to contact them by their default private communications channel. By default, it means you and the staff have agreed in written format that a letter that has arrived at this address is regarded as has reached the staff. Otherwise a simple excuse by the staff that "my company's notice did not reach me timely" will put you in an awkward situation before the court.

So, it's important for an employer to keep an default communications channel with staff -- private email address is always the best, for email address makes it easier for you to prove you have sent what to which address on what time.

Last but not least, while this communications channel usually will only be put in use when an extremely unhappy staff is about to bring troubles, the channel has to be set up when the staff is hired. It is an easy thing to do, but it's also an important risk-preventing process that many employers forget to do.

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