

THE PEOPLE'S REPUBLIC OF CHINA
(excluding Hong Kong, Macau and Taiwan)
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1. Are there any laws that govern a layoff of employees? If so, what do the laws require?

According to Labor Contract Law of the People's Republic of China, if the company reduces the workforce by 20 persons or more, or by a number of persons that is less than 20, but accounts for 10 percent or more of the total number of the employees, the company may lay off the employees after it has explained the circumstances to its trade union or to all of its employees 30 days in advance, has considered the opinions of the trade union or the employees and has subsequently reported the layoff plan to the labor administration department.

The laid-off employee shall be paid severance pay based on the number of years he/she has worked with the company at the rate of monthly wage for each full working year. Any period of more than six months but less than one year shall be counted as one year. The severance pay payable to an employee for any period of less than six months shall be one-half of his/her monthly wage. If the monthly wage of an employee exceeds three times of employees' average monthly wage published by the local government, the severance pay to payable to him/her for each full working year shall be 3 times of employees' average monthly wage and the cap of the number of years shall be 12 years.

The "monthly wage" means any employee's average monthly wage for the 12 months prior to the termination of his/her employment contract. If the employer would like to terminate the employment contract immediately, it should pay the employee additional one month salary in lieu of the 30-day notice; however, the employer should still consult with trade union or all of its employees as well as report the layoff plan to the competent government authority.

2. Are there any formal requirements for terminating an employee or groups of employees?

Please refer to our reply to question No. 1. In addition, the employer should be responsible for dealing with the formalities relating to the termination of the employment, such as the issuance of the document proving the termination of the employment, the transfer of the employee's file and social security account and etc.

3. Are there special legal requirements for a layoff caused by redundancy in the workforce?

No.

4. Are there employment laws that laid-off employees can use to challenge their inclusion in the layoff?

Yes. According to Labor Contract Law of the People's Republic of China, the following employees shall have the priority to be retained with the employer in case of

mass layoff: (1) those who have fixed-term employment contracts with a relatively long term; (2) those who have concluded open-ended employment contracts with the employer; or (3) those who are the only ones in their families to be employed and whose family has an old person or a child who requires financial support. Thus the employees who meet the above-mentioned requirements can challenge their inclusion in the layoff compared with other employees who are not laid off. In addition, any laid-off employee who falls in any circumstance listed in our reply a. (1)-(5) to question No. 6 below can also challenge their inclusion in the layoff.

5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?

In case the employee requests the continued performance of the employment contract by both parties, the employer should continue to perform the employment contract; in case the employee does not request so or the continued performance of the employment contract has become impossible, the employer shall pay the employees twice of the statutory severance pay as compensation.

6. What are the one or two most common mistakes that employers make that lead to liability for a layoff?

- a. The employer lays off the following employees whom the employer should not terminate in a case of a mass layoff in accordance with Labor Contract Law of the People's Republic of China:

(1) the employee is engaged in operations exposing him/her to occupational disease hazards and has not undergone a pre-departure occupational health check-up, or is suspected of having got an occupational disease and is being diagnosed or under medical observation;

(2) the employee has been confirmed as having lost or partially lost his/her capacity to work due to an occupational disease or a work-related injury when working for the employer;

(3) the employee is sick or got a non-work-related injury, and still in medical care;

(4) the female employee is in her pregnancy, confinement or nursing period;
and

(5) the employee has been working for the employer continuously for not less than 15 years and is less than 5 years away from his/her legal retirement age.

- b. The employer fails to consult the layoff plan with the trade union or all of its employees, or fails to report the layoff plan to the governmental authority as required by the law, or fails to compensate the laid-off employees as required by the law.

7. What other employment issues are likely to arise from a layoff in your jurisdiction that you have not addressed in your answers to the previous questions?

- a. In case of the mass layoff due to the sale of all or major business/assets of the company, the purchaser who will employ any laid-off employee should credit such employee for his/her years of prior service with the previous employer in the new employment contract executed by the employee and the purchaser unless such employee has been fully compensated in accordance with the law upon layoff.
- b. If the laid-off employee should comply with the non-compete obligations after the termination of the employment as stipulated in the employment contract, the company should pay the compensation to the employee in accordance with the employment contract on a monthly basis.