



Cornell University  
ILR School

Cornell University ILR School  
**DigitalCommons@ILR**

---

Law Firms

Key Workplace Documents

---

October 2006

# China Employment Law Update - October 2006

Baker & McKenzie

Follow this and additional works at: <http://digitalcommons.ilr.cornell.edu/lawfirms>

---

This Article is brought to you for free and open access by the Key Workplace Documents at DigitalCommons@ILR. It has been accepted for inclusion in Law Firms by an authorized administrator of DigitalCommons@ILR. For more information, please contact [hlmdigital@cornell.edu](mailto:hlmdigital@cornell.edu).

---

# China Employment Law Update - October 2006

## **Abstract**

An update in ongoing developments regarding labor relations and employment in China.

## **Keywords**

China, labor law, employment, public policy, labor relations

## **Comments**

### **Required Publisher Statement**

Copyright by Baker & McKenzie. Document posted with special permission by the copyright holder.

# China Employment Law Update

People's Republic of China

BAKER & MCKENZIE

October 2006

## NPC Continues Consideration of Employment Contract Law

The National People's Congress (NPC) continues its review of the draft *Employment Contract Law* (劳动合同法) following the submission of about 190,000 public comments after a first draft of the proposed law was released in March 2006. The proposed law would be China's first national law specifically governing employment contracts.

The law as currently drafted would impose significant requirements and restrictions on companies related to the manner in which they manage their employees. For example, enterprise unions or employee representatives will have veto rights over the adoption of employee manuals, codes of conduct and other company rules.

In addition, companies may find it more difficult under the proposed law to terminate employees for poor performance because of new restrictions on termination. Companies may also face increased difficulties protecting confidential information held by employees because of additional requirements relating to training bonds and non-compete agreements.

The NPC has reportedly revised the most recent draft of the proposed law to expand penalties that employers may impose on employees for violating contracts, to clarify the calculation of severance payments, and to delete a controversial provision that limited secondment of employees to one year.

According to media reports, the NPC is expected to approve a final version of the law in the first half of next year.

## Push to Unionize FIEs Gathers Steam

Chinese union officials are expected to intensify their efforts to establish enterprise unions in foreign-invested enterprises (FIEs) following the successful establishment of unions at all Wal-Mart stores in the PRC.

Local union officials are known to be directly contacting employees in FIEs, trying to duplicate their successful strategy with Wal-Mart. This is in contrast to the strategy used in the past when union officials simply contacted enterprise management in an attempt to have management initiate the establishment of unions. A website posting in China claimed that certain illicit offers were made to the employees of Wal-Mart. The website claimed that under this alleged offer, the first 25 Wal-Mart

[www.bakernet.com](http://www.bakernet.com)

Beijing  
Suite 3401, China World Tower 2  
China World Trade Centre  
1 Jianguomenwai Dajie  
Beijing 100004, PRC  
Tel: +86 10 6535 3800  
Fax: +86 10 6505 2309

Shanghai  
Unit 1601, Jin Mao Tower  
88 Century Boulevard, Pudong  
Shanghai 200121, PRC  
Tel: +86 21 6105 8558  
Fax: +86 21 5047 0020

Hong Kong  
14/F Hutchison House  
10 Harcourt Road  
Central, Hong Kong  
Tel: +852 2846 1888  
Fax: +852 2845 0476

©2006 Baker & McKenzie  
All rights reserved.

employees to join the union would be paid RMB 4,000 (US\$500), then receive another RMB 6,000 (US\$750) upon establishment of the enterprise union, and an additional RMB 300 (US\$37) per month after the enterprise union was established.

In addition, a subsidiary of Foxconn Technology was ordered in September by local union officials to establish a union at its factory in Shenzhen. The Taiwanese-owned company manufactures iPods for Apple Computer. The factory caught media and government attention after suing two Chinese journalists for reporting labor conditions at the factory.

Earlier this year, the All-China Federation of Trade Union (ACFTU) publicly announced that its stated goals during the unionization campaign are to establish enterprise unions in at least 60% of FIEs by the end of 2006 and in at least 80% of FIEs by the end of 2007.

## **Management Role in Unions Reduced**

The ACFTU issued regulations effective October 1 that curtail management's possible role in administrating unions.

The regulations, entitled the *Regulations Governing Labor Union Work in Enterprises (for Trial Implementation)* (企业工会工作条例 (试行)) (Union Regulations), state that company managers and their relatives may not serve on union committees. In the past, human resource directors and other company managers commonly served on union committees and acted as union chairpersons.

An indication that the ACFTU will exercise greater control and supervision over company unions is the added requirement that the appointment of union chairpersons are subject to the approval of the higher-level labor unions.

The Union Regulations also provide details as to how enterprise unions should be organized and operated. In addition, while a general principle in the past has been that the ACFTU and the enterprise unions under its umbrella should operate under the leadership of the Chinese Communist Party, the Union Regulations specifically provide that the Communist Party cell operating in an enterprise has supervisory powers over the enterprise union. Because Communist Party cells are often established in tandem with the establishment of enterprise unions, it appears that one motivation behind the recent unionization drive is to increase Communist Party influence in FIEs, in addition to protecting workers' rights.

## **Industry and Regional Collective Bargaining Introduced**

On August 17, 2006, the legal basis for industry and regional-wide collective bargaining was announced through the issuance of a joint

opinion by the ACFTU, the Ministry of Labor and Social Security, and the China Enterprise Confederation. In the past, collective bargaining was predominantly conducted at the enterprise level.

The first reported collective bargaining agreement reached following the issuance of the joint opinion occurred in Shenzhen. On September 6, 49 companies in the Tian'an Digital City and employee representatives of the companies signed a regional collective labor agreement.

The agreement affects more than 2,500 employees in the information, logistics, wholesale, and retail industries and includes an obligation for both sides to negotiate changes each year.

The agreement sets a minimum monthly wage of RMB 910 per month, which is RMB 100 higher than the government minimum. The agreement also includes terms regarding working hours, breaks, vacation, benefits, and penalties.

Labor bureau officials were quoted as stating that a goal was to expand the scope of the agreement to companies throughout Shenzhen.

In a related development, the Union Regulations provide that three-party collective bargaining with the involvement of labor service providers may be conducted when large numbers of employees are employed under secondment arrangements. This new right of secondees to engage in collective bargaining may have an impact on FIEs that employ large numbers of migrant workers through secondment arrangements, and may even lead to collective bargaining in representative offices of foreign companies.

Under existing law, if a company has an enterprise union and that union requests collective negotiations, management must enter into good faith negotiations to conclude a collective contract. Based on these recent developments, enterprise unions can be expected to be increasingly active in requesting collective negotiations.

## **New Rules Governing Employment Disputes**

The Supreme People's Court issued rules effective October 1 aimed at increasing employee access to courts for resolving employment-related disputes.

The rules, which are included in a document entitled Interpretation on Several Issues Concerning the Application of the Law to Trials of Labor Dispute Cases (2) (关于审理劳动争议案件适用法律若干问题的解释(2)), provides some further clarification regarding how labor disputes should be handled.

The new rules have made it easier for employees to bring claims against their employers or former employers by relaxing statute-of-limitation rules in favor of employees wishing to raise employment claims. In some

To find out more about how our China Employment Group can add value to your business, please contact:

[Hong Kong SAR](#)

Andreas Lauffs  
Head  
China Employment Group  
+852 2846 1964  
[andreas.lauffs@bakernet.com](mailto:andreas.lauffs@bakernet.com)

circumstances, employees may effectively be able to avoid statute-of-limitation restrictions altogether.

The new rules also provide that if a dispute arises when an employee is seconded to another company, the seconding agency should be the defendant. However, if a dispute involves the company that accepts the seconded employee, that company should be a joint defendant with the seconding agency. Although these new rules help to confirm that representative offices may join employee claims as defendants when the interests of the representative offices are at stake, the rules do not provide guidance whether representative offices have the legal capacity to initiate suits against employees.

While these Supreme People's Court rules address only labor litigation in the court system, Guangdong Province has recently circulated a draft of comprehensive rules addressing procedures for labor arbitration tribunals. The arbitration rules may in turn be a precursor for new national rules on labor arbitration proceedings.

## Bankruptcy Law Removes Priority for Employee Claims

Employees will no longer enjoy priority over creditors under the *Enterprise Bankruptcy Law* (企业破产法), which will take effect on June 1, 2007.

The new law provides bankruptcy procedures for both state-owned and private enterprises and sets forth how assets of bankrupt companies are to be distributed. Creditor claims are given priority over employee claims, such as unpaid wages. Under previous regulations, insolvent firms were required to settle claims with employees before other creditors could be paid.

---

Baker & McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

This Publication has been prepared for clients and professional associates of Baker & McKenzie. Whilst every effort has been made to ensure accuracy, this Publication is not an exhaustive treatment of the area of law discussed and no responsibility for any loss occasioned to any person acting or refraining from action as a result of material in this Publication is accepted by Baker & McKenzie.

### Data Privacy

Please contact Mary Tong by telephone +852 2846 1635 or e-mail: [chinalaw@bakernet.com](mailto:chinalaw@bakernet.com) should you wish your details to be added or deleted from our mailing list.