

Long services payment for resigned employee

Q: Our company took over a factory in Dongguang last July. We would like to ask the following questions under the light of the new labour legislation in China:- 1. We have heard that, if a contracted employee resign from the factory base on his own decision, the employee do not need to pay the long services payment, no matter how many years of contract his has already worked, is this true or not? 2. Under what circumstances does the employer not need to pay long services payment if a contracted employee terminate his work from factory. 3. Does the legislation require any reserve or withholding regarding the LSP? Could you kindly advise?

A: The answer to your question is set out below:

[1a] If the contracted employee gives 30 days' notice to resign from the Company on his own, the Company is not required to pay economic compensation to the employee (the term long service payment is not used in China). If the employee resigns because the company is in breach of the law (including the obligation to make contributions to social securities), the Company is required to pay economic compensation for the period commencing from 1st January 2008. The amount of compensation is computed with reference to the period as from 1st January 2008 to the last day of employment. Note that the Company is not required to pay compensation for the employment period before 1st January 2008.

[1b] Given that the employer is required to pay compensation under the law, the employee is entitled to one month's salary for one-year service completed. Where the period of employment is shorter than 6 month, the employer needs to pay half of the monthly salary. Where the employment period is longer than 6 months, the employer is required to pay one month's salary as compensation. The amount of monthly salaries refer to the average salaries the employee receives in the last 12 months preceding the cessation of employment, subject to a cap that is equal to three times of the average salaries (wages) in the city where the Company is located.

[1c] The number of months for purpose of computing the above-mentioned compensation shall be limited to 12 if the employee's last salary is 3 times more than the average wages in the city. There is no such limit on the number of months if the employee's last salary is not exceeding 3 times of the average wages in the city. The following example may help illustrate the costs to the employer: the Company is to lay off two employees (a manager and a general staff) and has to pay compensation under the law. The two employees have worked with the Company for 20 years. The information of the average monthly salaries in the last 12 months for the employee are RMB12,000.00 (the manager) and RMB7,000.00 (the staff) respectively. Assuming the average monthly wages in the city is RMB2,500.00.

	Compensation payable to manager	Compensation payable to general staff
I	Average monthly wage in the city x 3 times x 12 months	Average salaries for last 12 months preceding termination x 20 years
II	RMB2,500 x 3 x 12 = 90,000	RMB7,000 x 20 = 140,000

Note that since the manager's salaries in the last 12 months exceed three times of the average monthly wages in the city, the amount is capped at what is equal to three

times of the average monthly wages in the city. The manager has worked with the Company for 20 years, but this is not considered either. The number of months is reduced to 12 in accordance with the law. Here the employment contract law favors the low-pay employee.

[2] The employer can terminate the employee without the obligation to pay compensation to the employee:

- (a) It is proved that the employee is not fit for the job during the probation period;
- (b) The employee has seriously breached the Company's rules and policies;
- (c) The Company suffered huge financial loss because the employee has seriously neglected his duty or he is engaged in malpractices for his personal gains;
- (d) The employee takes up employment with other organizations, and that has adversely affected the work he performs in the Company, or refuses to terminate the other employment after receiving requests from the Company;
- (e) The employee has provided false information at the time of joining the Company and that renders the employment contract void under PRC law;
- (f) The employee has been convicted of a criminal offence.

[3] The PRC employment contract law does not require the employer to make provision for economic compensation. But it is certain that the employer's legal obligation has been increased and the legal rights of the employer have been reduced since the enactment of the law.

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