

Procedures and tips for expats working in China

Description

China has enacted a special regulation governing foreigners working in China, namely, “Administrative Provisions regarding Foreigners Working in China”, coming into force on May 1, 1996.

According to this Administrative Provisions, in order to employ an expat:

1. the expat shall meet the following criteria:

- (1) over 18 years old; 18-60 for males, and 18-55 for females;
- (2) no serious mental diseases, infectious phthisis;
- (3) no criminal records;
- (4) carrying a valid passport;
- (5) employment is secured.

2. The company that employs the expat shall apply to local labor department for approval, “license for employing foreigner”;

To apply for such a license, the company shall prepare some documents/papers such as corporate incorporation certificate, the expat’s resume (with full description of work experience), expat passport photocopy, certification of technical title etc..

Foreign invested companies are easier to employ foreigners.

Foreigners that are dispatched to serve as chief representative or general representative of a foreign company’s representative office in China do not need to have such a license before coming to China. They can directly apply for Work Permit after landing in China.

3. The company, after getting the license, will send the license together with a notice for visa to the foreigner. Then the foreigner shall go to Chinese consulate to apply for a Z visa.

4. After the landing by the foreigner in China, the company shall within 15 days of landing, apply to local labor department for Work Permit for the foreigner.

Within the said 15 days, the foreigner shall sign employment contract with the company, and go to a designated hospital for obtaining a health certificate.

To apply for the Work Permit, the following documents shall be submitted (1) health certificate; (2) passport and visa, (3) labor contract/engagement agreement or payment arrangement document, and photos.

5. After getting the Work Permit, the foreigner shall within 30 days of landing apply to local police department to obtain the Residence Permit.

With the Residence Permit done, you are now legal in working in China.

Risks expats shall heed:

1. we have seen sad stories about foreigners coming to China for employment ended up with only bitter nightmare because the Chinese employer fails to obtain Work Permit for the foreigners due to change of mind for hiring the foreigner. The foreigner was left in a very awkward situation, living in small room without heating in winter and sleeping in the sofa only, even having no washing room in the house. Since the employer did not sign any legal labor contract or anything binding upon it, this foreigner simply could not do anything to punish the employer. The only thing he can possibly do is to return to his homeland.

It is a very sad story. So foreigners that want to dig the gold land of China shall be cautious before coming to China. The solution for avoiding such risk is to ask the employer to sign any statement or agreement in which the employer undertakes to cover all cost before completing all necessary procedures and formalities for hiring you, and don't forget to insert a liquidated damages clause in case that things don't work out so that you can sue the employer for all your expenses and losses suffered from your trip to China.

2. For expats working in a representative office of a foreign company in China, you shall be aware of the difference of having and not having a third party employment agency involved in your employment with the rep office.

It is prescribed by law that employment with a rep office shall be handled through a government affiliated employment agency. With such third party properly involved, your employment with the rep office will be governed by China Labor Law under which you are well protected in the event of termination by the rep office. However, without the third party involved, your employment with the rep office will be regarded as service providing contract with the rep office, an independent contractual relationship instead of labor relationship under China Labor Law.

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