



DECENT WORK CHECK

CHINA 2023

Iftikhar Ahmad

WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental Principles and Rights at Work and Core ILO Conventions, are practised, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects deemed necessary in attaining “decent work”. The work makes the abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and scores the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Finally, workers can compare their personal score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

A Decent Work Check is beneficial both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also helpful for researchers, labour rights organisations conducting surveys on the situation of rights at work and the general public wanting to know more about the world of work. For example, WageIndicator teams worldwide have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed – being a worker, self-employed, employee, employer, policymaker, labour inspector – there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer), and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work, especially the effective enforcement of legislation in financially constrained states, a rise in precarious employment and analysing the impact of regulatory regimes.

In 2023, the team aims to include at least 15 more countries, thus taking the number of countries with a Decent Work Check to 125!

The text in this document was last updated in June 2023. For the most recent and updated text on Employment & Labour Legislation in China in Chinese, please refer to: <https://wageindicator.cn/>

MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Labour Law, 1994
2. Employment Contract Law, 2007
3. Work Safety Law of the People's Republic of China, 2002 amended in 2009
4. Social Insurance Law of the People's Republic of China, 2010
5. Constitution of the People's Republic of China, 1982
6. Trade Union Law 1992

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

China has not ratified the Conventions 95, 117 and 131.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Labour Law, 1994

Minimum Wage

Minimum wage is defined as the minimum labour remuneration paid by the employer required by law on the condition that the labourers have provided normal labour during the legal working hours or working hours agreed by the labour contract. Minimum wage will not include payment owed on account of overtime, special allowances paid by reason of a particular work environment or condition (e.g. shift duties, working in mines, working at high altitudes, etc), statutory employee welfare benefits, travel-related expenses, or protective clothing or equipment.

In accordance with the Labour Law, the state has to implement a system of guaranteed minimum wage. Minimum wage can be fixed by provincial, regional or municipal governments and is reported to the State Council for record. Labour Law requires that wages paid to the labourers by employing units should not be less than the local standards on minimum wages.

Minimum wages in China are determined region wise (for 31 provinces) and the highest monthly minimum wage is in the Shanghai region while the lowest minimum wage is in the Anhui region. Minimum wages in different regions are determined and adjusted with reference to the following factors: (i) living expense; (ii) the average wage level in the society; (iii) labour productivity; (iv) employment situation; and (v) different levels of economic development between regions.

Enforcement of all labour legislation including minimum wage provisions is

entrusted to the labour departments of the local governments. Individual workers also have the right to file a complaint with a labour inspectorate or go for arbitration or litigation. A trade union may also supervise implementation of a law and reports violations to the labour inspectorate.

The Labour Contract Law provides that if an employing unit fails to comply with the provisions of a labour contract or provisions by the State and fails to timely pay a full amount of labour remuneration to a labourer; or pays lower than the local minimum wage, the competent labour department should order the employing unit to pay the outstanding amount. If these payments are delayed, a compensation equivalent to 50%-100% of these payments must be paid in addition to the due payments.

The Regulation of Minimum Wages also provides that where a violation is established, the employer is ordered to pay the difference within a specified period and damages of up to 5 times the outstanding amount.

Source: §48-49 of the Labour Law 1994; § 3, 12 and 13 of the Regulations on Minimum Wages 2004; §85 of the Labour Contract Law

[The current minimum wage rates can be found in Minimum Wage Section.](#)

Regular Pay

The wage payment interval may be fixed in an employment contract however it can't exceed one month. Wages are to be paid monthly in cash for standard workers and on fortnight basis for part-time workers. Wages can't be deducted or delayed without proper justification.

An employing unit should timely pay the full amount of salary to a worker according to the specification of the labour contract or relevant State regulations. Part-time workers are paid by the hour of work within 15 days after the work is completed.

Source: §50 of the Labour Law 1994; §30 & 72 of the Labour Contract Law 2007; §5 of the Regulations on Minimum Wages 2004

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

China has not ratified any of the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter time (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Labour Law, 1994

Overtime Compensation

In accordance with the Labour Law, normal working hours are 8 hours a day and 40 hours a week on the average. In case of piecework, employing unit rationally fixes quotas of work and standards of piecework remuneration in accordance with the normal working hours.

The employing unit may extend working hours due to production or business needs after due consultation with workers and trade union. The extended working hours (overtime) is usually limited to 1 hour per day but it may be up to 3 hours in certain circumstances. However, total overtime hours in a month must not exceed 36 hours (around 9 hours in a week). The overtime limit is not applicable in the event of natural disaster; accidents; if the life and health of labourers or the safety of property is in danger; in need of urgent dealing; breakdown of production equipment, transportation lines or public facilities, production and public interests are affected; repair that must be done without any delay; or other circumstances stipulated by laws, administrative rules and regulations.

The compensation for overtime work is at least 150% of the normal hourly wage rate.

Source: §36, 37, 41-44 of the Labour Law 1994

Night Work Compensation

There is no clear provision in the labour law on premium pay for night workers however

Doing Business report indicates that night workers are paid 139% of the usual hourly wage rate.

Compensatory Holidays / Rest Days

In extraordinary circumstances, workers may perform work on weekly rest days and public holidays. Instead of getting higher wages for working on weekly rest day, workers get a compensatory day off in lieu of the rest day during the following week. However, if it is not possible to give compensatory day-off, workers may be paid at the premium rate of at least 200% of the normal hourly wage rate for working on a weekly set day. There is no provision for compensatory holiday for workers working on a public holiday.

Source: §44 of the Labour Law 1994

Weekend / Public Holiday Work Compensation

Workers may be required to work on weekly rest days and public holidays. In such circumstances when employees have to work on official holidays, they are entitled to receive wages at a premium rate of 300% of the normal hourly wage rate. Premium pay of 300% of the normal hourly wage rate is paid for working on weekly rest day only in case when it is not possible to give a compensatory day-off.

Source: §44 of the Labour Law 1994

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.
In addition, for several industries, different Conventions apply.

China has ratified the Convention 14 only.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

Regulations on annual leave and holidays:

- Labour Law, 1994

Paid Vacation / Annual Leave

According to the labour law, the State should practice a system of annual vacation with pay. This system is outlined in Regulations on Paid Annual Leave of Employees. The length of annual leave depends on his/her cumulative working time—not just the length of service with the current employer. Length of annual of annual leave (5-15 days) depends on the cumulative length of service as follows:

- 5 days of paid annual leave for workers who have worked for cumulative 1-10 years;
- 10 days of paid annual leave for workers who have worked for cumulative 10-20 years; and -15 days of paid annual leave for workers who have worked for cumulative more than 20 years.

The employer, on worker's consent, determines the dates of annual leave according to the actual production and work situation. Annual leave may be taken at once, or in parts, or may be accrued for next year. In case the employer is unable to provide annual leave, the worker is entitled 300% of the daily wage in lieu of compensation for each day of the annual leave due and not taken.

Any dispute over annual leave is handled in accordance with the related laws and administrative regulations.

Source: § 45 of the Labour Law 1994; §3-8 of Regulations on Paid Annual Leave of Employees

Pay on Public Holidays

Workers are entitled to paid holidays during Festival holidays. These are usually 11 in number.

Public holidays are regulated under the Measures on Annual Holidays for Public Festivals and Memorial Days. These include Gregorian New Year (01 January), Chinese New Year or Spring Festival (1-3 of the first month of Lunar calendar), International Labour Day (01 May), National Day (1-3 October), Mid-autumn day, Dragon boating day and Tomb Sweeping Day.

Date for the Chinese festivals is determined by Chinese lunar calendar. If a public holiday falls on a Saturday or Sunday, it is moved to the following work day. The public holidays for religious minorities in China are determined by the local government in each district in accordance with the customs.

Source: §40 of Labour Law 1994, Measures on Annual Holidays for Public Festivals and Memorial Days

Weekly Rest Days

Workers are entitled to at least 24 consecutive hours (1 day) of rest per week after at most 6 continuous working days. The weekly rest period is reckoned as a paid time.

The State Council Regulations on the Hours of Work of Employees however prescribe 2 days off per week for state organs and institutions. Weekly rest days are usually Saturday and Sunday.

There is no clear provision in the law on

rest breaks (during working hours) and daily rest periods. These are determined under the employment contract.

Source: §3 & 38 of Labour Law 1994; §17 of the Labour Contract Law 2007; State Council Regulations on the Hours of Work of Employees

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

China has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Employment Contract Law, 2007

Written Employment Particulars

Individual employment contract may be concluded for definite period (fixed term), indefinite period (non-fixed term) and project based labour contract based on the completion of a specific amount of work. In order to establish a labour relationship, a written contract has to be signed between the worker and employer. It must be concluded within a month of commencement of employment. If employer fails to provide the employment contract within a month, the worker is entitled to double salary starting from the second month of employment until a contract is concluded or on the one-year anniversary of the commencement of employment. If an employer fails to conclude a written labour contract with an employee after a year of employment, the employment contract is considered to be an open term contract. The employment contract can be oral but only in case of part-time employment. However, even in such a case, if either party requests a written employment contract, a written contract must be concluded. Part time workers are those are working up to 4 hours per day and 24 hours per week.

The written employment contract must include provisions detailing the following items: name, registered address and legal representative or person in charge of the employing entity; name, home address, and resident identity card number (or other valid identity document number) of the employee; term of the employment contract; job description and place of work; working hours, rest, and leave;

remuneration; social insurance; and work protection, work conditions and protection against occupational hazards. An employer and worker may also agree to provisions regarding a probationary period, a training and service period, confidentiality and non-compete obligations, and supplementary benefits. Employment contract with both the local and foreign workers must be concluded in Chinese. A foreign language version may be provided to the worker for reference only.

If a written labour contract is not entered into, the remuneration for the worker would be in accordance with the provisions of collective labour contract. And if the collective contract is not available, worker would be paid equal pay for equal work. A labour contract has clauses on particulars of employer & employee, term (duration) of the labour contract, job description, remuneration, etc.

Source: §10-17 of Employment Contract Law

Fixed Term Contracts

Chinese labour Law allows hiring fixed term contract workers for tasks of permanent nature. A fixed term contract is a labour contract whose termination date is agreed upon by the employer and the worker. Law does not prescribe maximum duration of a single fixed term contract however after 10 years of continuous service or 2 renewals of fixed term contracts, the contract is considered non-fixed term contract. Fixed term contract for foreign workers cannot exceed five years.

Source: § 13 & 14 of Employment Contract Law

Probation Period

Employment Contract Law specifies that the probation period must be determined in the employment contract but it may not exceed 3 months. Length of probationary period depends upon the term/duration of a contract. Probationary period is:

- one month for an employment contract ranging between 3 months to 1 year;
- 2 months for an employment contract ranging between 1 year to 3 years; and
- 6 months for an employment contract of duration more than 3 years or indefinite/non-fixed term contracts

Probation periods are not allowed for project-based contracts or if the term of a contract is less than three months. It also requires that a worker may not be appointed under probation twice with the same employer. Above referred probationary periods are the maximum periods. Probationary period cannot be extended even with the employee's consent unless the total period is within the maximum limit set under the law.

The wage of a probationary worker cannot be less than the minimum wage level for the same job in the enterprise or cannot be less than 80% of the wage agreed upon in the labour contract and cannot be less than the minimum wage in the locality where enterprise is located.

Source: § 19-21 of Employment Contract Law

Notice Requirement

The Employment Contract Law requires written termination notice before

terminating services of a worker.

An employment contract terminates if its terms expire; the worker has started receiving basic old age insurance pension in accordance with the law; the labourer dies, or is declared dead or missing by a People's Court; the Unit is declared bankrupt according to law; the Unit has its business license revoked, is ordered to close down or decides to dissolve ahead of schedule; or other circumstances, specified in laws or administrative laws and regulations, arise.

A fixed term contract terminates at the end of its term or by cancellation by either of the parties or in the case where the labourer does not agree to renew the contract even if the Unit proposes to renew the labour contract.

Either party can terminate an indefinite term employment contract by serving a notice or paying in lieu thereof. According to the Chapter 4 of the Employment Contract Law, either party may terminate the employment contract after giving 30 days' written notice. The valid grounds for dismissal include worker's conduct, worker's capacity (incompetence and inability to work due to some injury) and economic reasons.

During a probation period, the notice period is three days. An employee may resign without advance notice if the employer fails to timely pay wages or commits a breach of obligations.

On account of gross misconduct, an employer may terminate employment contract without notice and without paying the severance pay to the employees: serious violation of employer's rules and regulations; serious dereliction

of duty or graft resulting in major harm to the employer's interests; use of coercion by employee in making the employer sign the contract, etc.

Lay-offs are regulated under the Employment Contract Law. Lay-off occurs when an employer needs to reduce its workforce by 20 or more persons or by a number of persons that is fewer than 20 but is equal to at least 10% of the workforce of the enterprise.

Certain employees are protected from termination based on lay-off or individual termination requiring notice: employees suffering from occupational disease or those who have sustained an employment injury; employee is receiving medical treatment because of non-occupational injury; pregnant employees for the period of pregnancy and one year after child birth; employee has worked at least 15 years for the same employer and is only 5 years far from legal retirement age; employee is a trade union office bearer; etc.

An employer may pay one month's wage in lieu of notice. It is obligatory for an employer to notify the relevant trade union in advance if employer plans to unilaterally terminate employee contracts. Workers employed on a part time basis may be terminated at any time without cause.

In case of wrongful termination, the dispute arises and party has to apply for mediation. If a party is not willing to follow through with mediation, the other party may apply for arbitration. Parties disagreeing with arbitration awards are permitted to bring actions in district courts.

Statutory remedies for wrongful termination are payment of back wages,

penalties, and reinstatement or twice statutory severance pay.

Source: §36-50 of Employment Contract Law; §21 of the Labour Union Law 1992

Severance Pay

The Employment Contract Law provides severance pay to the workers on termination of employment contract but not in cases where the employer has grounds for the summary dismissal of the worker. Severance pay may also need to be paid at the end of a fixed term contract, unless the worker is given the opportunity to renew the contract and refuses. Workforce reductions by mass layoffs also require severance pay.

Amount of Economic Compensation/ Severance Pay is based on the number of years a labourer has worked in a unit. It is equivalent to one month's wages for every year of service. If a worker has worked in a unit for more than 6 months but less than 1 year, he will get severance pay for one year. On the other hand, if a worker has worked for less than 6 months, he will get half-month's wage as severance pay.

If a worker's wage exceeds 300% of the average monthly wage in the locality he works, his average monthly wage for severance purposes will be capped at 300% of the local average monthly wage and would be entitled to a maximum of 12 months' wages as severance payment.

Under the Employment Contract Law, employers must inform and ask the opinion of the trade union or staff representatives 30 days in advance if the employer has to retrench 20 or more

employees. Where the number of to-be-retrenched employees is less than 20 however is 10% or more of the organization's total number of employees, the employer can carry out its retrenchment plan after reporting it to the labour administrative authorities.

The trade union or labour authorities have to be informed of the retrenchment plan in the following cases:

- production and business difficulties;
- production changes, significant technological reform or a change to the mode of operation;
- restructuring due to the Enterprise Bankruptcy Law;
- significant change in the objective circumstances that led to the conclusion of employment contract and where the contract can no longer be maintained.

In the event of collective redundancy/mass layoff, laws allow for prioritization while retrenching workers in the following manner:

- workers with the fixed term employment contract;
- workers with an indefinite term contract;
- workers who need to support elderly or young family members or whose family members are unemployed.

In the case of rehiring with 6 months of retrenchment, the workers must be prioritized for rehiring.

Ministry of Human Resources and Social Security has repealed the “Measures on Economic Remedies for Breach and Termination of Employment Contracts” generally referred to as “Document No.

481”. The provisions of Document No. 481 regarding monetary compensation for violating and terminating employment contracts without reasonable cause, is no longer invalid. Earlier, the enterprises had to pay an additional 25% or 50% on top of base salary to workers in the event of dismissal without cause. The 25%-50% additional compensation was applicable where an employer deducted or delayed payment of a salary for no reason; refused to pay overtime; paid wages below the level of local minimum wage or fails to pay a severance payment. Now, since the amount of compensation will be determined by the Employment Contract Law, workers could receive an additional 50%-100% on top of their salary in the event of contract breach by the enterprise without reasonable cause.

Source: § 46-47 & 85 of Employment Contract Law

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981) Recommendation 165: Workers with Family Responsibilities (1981)

China has not ratified the Convention 156 and 165.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Labour Law, 1994

Paternity Leave

There is no national labour regulation requiring employers to provide paternity leave. Availability of paternity leave varies across jurisdictions and is typically premised on obtaining One Child Card. Fathers, with One Child Card, can take 10-30 days of paternity leave.

The amount of time that a male employee can take as paternity leave largely depends on where the individual is registered for social security. In general, China's statutory paternity leave does not exceed two weeks (14 days). For example, in Shanghai, a male employee is only entitled to a three-day paternity leave in the case of late childbirth. While in Shenzhen, a male employee can enjoy a 10-day paternity leave if his wife is 23 or older.

Parental Leave

There is no provision in the law on paid or unpaid parental leave.

Flexible Work Option for Parents / Work-Life Balance

No provisions could be located in the law supporting work-life balance for parents or workers with family responsibilities.

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

China has not ratified the Conventions 103 and 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Labour Law, 1994

Free Medical Care

Medical Benefits are provided under a national maternity insurance fund. A Basic Medical Insurance Fund has also been established which covers only the urban workers. These Funds can be used for maternity allowance and medical fees. The maternal and child health law requires that the State should provide access to medical and health care services to mothers and infants. These services should also be available to child-bearing, pregnant and lying-in (post-natal) women.

Source: National Maternity Insurance Fund

No Harmful Work

Labour Law, 1994 prohibits employment of pregnant workers or those nursing their children (of less than one year of age) to work with Grade III physical labour intensity as stipulated by the State. Overtime and night shifts are also prohibited to pregnant workers (with seven months of pregnancy) and women workers breast-feeding their children (under the age of 1 year). In case, these women workers are unable to do their original work, lighter or other work should be assigned to them according to the medical certification.

Source: §61 & 63 of Labour Law 1994

Maternity Leave

Female employees are entitled to 98 days of maternity leave including 15 days of prenatal leave. Maternity leave may be

extended by fifteen days under special circumstances such as dystocia/difficult birth, multiple births (15 days leave for each additional infant) and miscarriage that occurred in the first 4 months of pregnancy. This leave is 42 days if miscarriage occurred after the first 4 months.

In addition, a Chinese female employee who gives birth to her first child at age 24 or older is regarded as a case of 'late childbirth,' and thereby will be entitled to an additional 'late maternity leave' of roughly 30 days (this may vary widely by location, e.g., 45 days in Dalian).

Sources: Regulations on Labour Protection for Female Workers and Employees 1988; Regulations on Special Labour Protection for Female Employees 2012

Income

According to Labour Law, 1994, female workers are entitled to maternity leave with full pay. Generally, a registered female employee is paid by the Social Security Bureau.

Source: § 62 of the Labour Law 1994

Protection from Dismissals

Protection from dismissals during pregnancy and maternity leave is guaranteed under Labour Code.

A women worker can't be dismissed during the period of her pregnancy, child-birth and breast-feeding periods.

If a worker gets pregnant during the term of her fixed-term contract, and the contract ends during the pregnancy, the contract is automatically extended

(through a renewed end date or a second contract) until the end of the breast-feeding period.

Source: §29 of the Labour Law 1994; §42 (4) of the Employment Contract Law

Right to Return to Same Position

There is no express provision on the right to return to same position however it is implied under section 29 of Labour Law that a women worker can't be dismissed during the term of her maternity leave.

Source: §29 of the Labour Law 1994

Breastfeeding

In accordance with article 9 of Regulations on Special Labour Protection for Female Employees, 2012, female workers are entitled to two paid nursing breaks, each of 30-minute duration, for new mothers to breastfeed their child(ren) until a child is twelve (12) months old. The breast-feeding/nursing breaks are in addition to the normal breaks an employee receives during the working day. Additional 30-minute break is provided for each additional infant to be nursed.

If quite many females are employed in a unit, clinics for female employees, rest-rooms for pregnant workers, nursing rooms, nurseries and kindergartens have to be established.

Source: §9 & 11 of Regulations on Special Labour Protection for Female Employees 2012

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

China has ratified the Convention 155 only.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Labour Law, 1994
- Work Safety Law of the People's Republic of China, 2002 amended in 2009

Employer Cares

Employers are required to establish and strengthen the system for occupational safety and health, strictly implement the rules and standards of the State on occupational safety and health, educate labourers on occupational safety and health, prevent accidents in the process of work, and reduce occupational hazards. Employers are required to ensure worker safety by establishing a sound work safety responsibility system and improving working conditions.

It is obligatory for an employer to create a sound work safety responsibility system of the business entity; organize the formulation of rules and operating procedures for work safety of the business entity; ensuring effective input for work safety of the business entity; overseeing and inspecting work safety of the business entity to eliminate work safety risks in a timely manner; organizing the preparation and implementation of the emergency rescue plans for work safety accidents; and reporting work safety accidents in a timely and truthful manner.

The establishments producing, marketing or storing hazardous substances must establish a work safety management body or have full-time work safety management personnel. Other establishments must also hire work safety personnel, full time or a part time, depending on the number of workers.

The employers must study and understand the safety technical features of any new technique, technology, material or equipment, adopt effective safety protection measures and provide special education and training to the workers on work safety.

It is the duty of the employer to set conspicuous signs on business premises and relevant facilities and equipment with greater risk factors. Safety equipment must be designed, manufactured, installed, used, tested, maintained, renovated and retired in accordance with national or industry standards. Routine maintenance and regular testing of equipment is also mandatory. Techniques and equipment that seriously threaten work safety must be eliminated.

Workers must also abide by the Health and safety regulations at workplace. They have the right to refuse such work that is unsafe and contrary to the health and safety regulations.

Source: §52-56 Labour Law 1994; §17-31 of the Work Safety Law of the People's Republic of China, 2002 amended in 2009

Free Protection

Employers are required to provide their workers with labour protection products (protective clothing/gear) meeting the national or industry standards and supervise and educate their employees on wearing or using such products in accordance with the rules of use. These products are free of cost for the workers and employers have to arrange funds for these protection products. An employer may be fined for not providing labour protection products meeting national or

industry standards.

Source: §37, 39 & 83 of the Work Safety Law of the People's Republic of China 2002 amended in 2009

Training

Employers must ensure that their workers have necessary work safety knowledge, are familiar with the relevant work safety rules and operating procedures and possess safe operation skills for their respective posts by providing them education and training in the work safety.. If a worker fails to pass the qualifications test after getting this training, he/she won't be assigned to work. Before using new machines, technology and techniques, employers provide special education & training on work safety to their workers.

Workers must receive education and training on work safety, possess work safety knowledge necessary for their jobs, improve their work safety skills, and enhance their capabilities of preventing accidents and handling emergencies. An employer may be fined for not conducting necessary education and training on health and safety at work for its workers.

Source: §21-23, 50 & 82 of the Work Safety Law of the People's Republic of China 2002 amended in 2009

Labour Inspection System

Ministry of Labour's circular (1994) provides for a vibrant labour inspection system however it is not in line with the requirements of ILO Convention 081.

The administrative departments of labour under the People's governments at or

above the county level, in accordance with the law, supervise and inspect the implementation of laws, rules and regulations on labour by the employing unit, and have the power to stop any acts that run counter to laws, rules and regulations on labour and order the rectification thereof.

The inspectors from the administrative departments of labour have the right to enter into the employing units to make investigations about the implementation of laws, rules and regulations on labour, consult the necessary data and interview anyone. The labour inspectors can make correction on the spot or may require correction within a specified time limit of violations of law on work safety discovered in the inspection; and for acts subject to administrative punishment in accordance with law, making decisions to impose administrative punishment in accordance with the Law and other relevant laws and administrative regulations.

The inspector may order immediate elimination of accident risks discovered in the inspection; ordering evacuation of workers from dangerous areas and ordering suspension of production or business or suspension of use if safety cannot be guaranteed before or during the elimination of major accident risks and allowing resumption of production or business or use upon examination after elimination of major accident risks. The inspector may also seize or impound facilities, equipment and devices which do not meet the national or industry standards for work safety protection as determined based on evidence, and making a decision on the handling of the case within 15 days in accordance with law.

The inspectors must produce their papers

while performing public duties, enforce laws impartially, and abide by the relevant regulations. They must keep a written record of an inspection, including the time, place and contents of the inspection, the problems discovered in the inspection and the handling of such problems, which are signed by the inspectors and the persons in charge of the inspected entity. If the persons in charge of the inspected entity refuse to sign, the inspectors record it and report it to the departments responsible for work safety supervision and administration.

The employer and its associates must cooperate with the inspector, conduct joint inspection if possible and take timely action if any safety problem comes up.

The Ministry of Human Resources and Social Security launched a nationwide grading system to evaluate labour law compliance in 2017. Employers now receive an annual grade (A, B or C) for their compliance with labour law in any given year based on the inspections (routine and random) of local authority, review of employer's employment records and an investigation of complaints filed with the authority.

The following criteria are considered while assessing compliance with labour legislation:

- i. internal labour rules and regulations;
- ii. compliance with all labour and employment legislation;
- iii. minimum, working hours, rest time in line with the legislation;
- iv. female and underage worker protection; and
- v. enrolment and participation/ payment of contribution in social

insurance programs

Employers with C grade will be monitored more frequently through routine and random inspections. The labour authority will publish the key information of the employer for seriously violating labour law.

When publishing these labour law decisions, the following information will be released to the public (with exceptions for national security, trade secrets or individual privacy):

- The employer's full name, integrated social credit code/registration number, and address
- The name of the legal representative or the person-in-charge
- The details of the violation
- The decision made by the authorities including fines imposed

Source: §85-86 of the Labour Law 1994; §56-60 of the Work Safety Law of the People's Republic of China 2002 amended in 2009

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

China has not ratified the Convention 102, 121 and 130.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Labour Law, 1994
- Social Insurance Law of the People's Republic of China, 2010

Income

Regulations on Medical Treatment partially regulate leave for non-work-related illness or injury. The duration of an employer-approved medical treatment period/paid sick leave ranges from 3 to 24 months, depending on the worker's total years of work experience and his/her length of service with the current employer.

The specific provisions for paid sick leave are as follows:

(1) If the length of actual total service is less than 10 years:

- 3 months of medical treatment/paid sick leave for those who have worked for less than 5 years;
- 6 months for those worked for 5 years or more

(2) If the length of actual service is 10 years or more:

- (i) 6 months of medical treatment for those with less than 5 years of service;
- (ii) 9 months for those with more than 5 years but less than 10 years of service;
- (iii) 12 months for those with more than 10 years but less than 15 years of service;
- (iv) 18 months for those with more than 15 years but less than 20 years of service; and
- (v) 24 months for those with 20 years or longer years of service

Sickness benefit ranges from 60% to 100% of the insured worker's last monthly wage

up to six months each year. After the first 6 months, sickness benefit is 40-60% of an insured worker's last monthly wage until the worker recovers or is assessed with a permanent disability.

Source: Regulations on Medical Treatment 1995

Medical Care

Insured workers receive medical benefits at an accredited hospital or clinic on a fee-for-service basis. Medical benefits for dependents are not provided.

Job Security

Employment of a worker is secure during the paid sick leave. A sick worker may be fired only if he/she is unable to take up his original work or the new work arranged by the employer after the completion of his medical treatment for illness or non-occupational injury.

Source: §26 of Labour Law 1994

Disability / Work Injury Benefit

Work injuries are divided into four categories: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker.

In the case of permanent incapacity/disability, benefit is awarded according to 10 different degrees of assessed disability. For the total permanent disability (1-4 degrees), a lump-sum of 27 months of insured workers' previous wage plus a monthly pension of 90% of previous average wage (1st degree), 25 months of wage plus 85% monthly pension (2nd

degree), 23 months of wage plus 80% monthly pension (3rd degree), 21 months of wage plus 75% monthly pension (4th degree) is paid. In case of moderate permanent disability (degrees 5–6), a lump sum of 18 months of wages (5th degree) or 16 months of wages (6th degree) is paid. If the employer cannot offer the insured an appropriate job, a monthly benefit of 70% (5th degree) or 60% (6th degree) of the insured's wage before the disability began is paid. On the other hand, for the minor permanent disability (7-10 degrees), a lump sum of 13 months of wages (7th degree), 11 months of wages (8th degree), nine months of wages (9th degree), 7 months of wages (10th degree) is paid as permanent disability benefit.

In the case of temporary disability, 100% of an insured worker's monthly salary is paid for 12 months. This can be extended to a maximum of 24 months in special cases.

In the case of fatal injury, dependents (widow/widower, children, parents, grandparents/children, brothers and sisters) receive survivors' pension. 40% of the deceased worker's last monthly wage is paid to the widow(er) while 30% is paid to each additional dependent. Law also provides for death allowance (a lump sum of 20 times the national urban per capita disposable income) and funeral grant (a lump-sum of six months of local average wage). Total survivors' benefits can't exceed a deceased worker's last monthly wage.

Source: Social Insurance Law of the People's Republic of China 2010

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions
Employment Injury Benefits: Conventions 121 (1964),
Invalidity, Old age and survivors' benefits: Convention 128(1967)
Medical Care and Sickness Benefits: Convention 130 (1969)
Unemployment Benefits: Convention 168 (1988).

China has not ratified any of the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give “due regard to the working ability of elderly persons” and “demographic, economic and social criteria, which shall be demonstrated statistically”. Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- Social Insurance Law of the People's Republic of China, 2010

Pension Rights

Social Insurance Law provides for both full and early pension. For full pension, a worker must have attained 60 years of age (same for professional women, age 55 for non-professional salaried women), or age 50 (other categories of women) with at least 15 years of contributions. For early pension, a worker must have attained age of 50 years (45 years for women) with at least 10 years of contributions and assessed with total disability.

For workers employed in arduous or unhealthy work, a worker must have attained age 55 (men) or age 45 (women) with at least 15 years of coverage for full pension and eight to 10 years of continuous coverage for early pension.

Full pension is the average local wage in the previous year plus the average individual monthly wage used to calculate contributions, divided by two. The amount is then multiplied by 1% for each year of contributions. Early pension is based on the average local wage in the previous year, the average individual monthly wage used to calculate contributions, and the number of years of contributions. The minimum pension is 40-60% of the average local wage.

Source: Social Insurance Law of the People's Republic of China 2010

Dependents' / Survivors' Benefit

Social Insurance Law provides for survivor

Pension (these include dependents including widow, widower, children and parents). Survivors' benefits is payable as the lump sum of 6 to 12 months of the deceased worker's last monthly wage according to the number of surviving dependents.

Funeral grant is paid as a lump sum of two months of the average local wage in the previous year. When an immediate family member who was dependent on the insured worker dies, 33% to 50% of the monthly average local or enterprise wage in the previous year is paid, depending on the age of the deceased.

Source: Social Insurance Law of the People's Republic of China 2010

Unemployment Benefits

In accordance with the Social Insurance Law, workers are entitled to unemployment benefits depending upon the length of coverage/contributions paid by the worker and employer provided that the worker has at least one year of covered employment. The benefit is paid for up to one year with less than five years of coverage, for up to 1.5 years (18 months) with at least five but less than 10 years of coverage, and up to two years with 10 or more years of coverage. Workers should apply for this benefit within 60 days of unemployment. The unemployment benefit is lower than the local minimum wage.

Source: Social Insurance Law of the People's Republic of China 2010

Invalidity Benefits

The Social Insurance Law provides for invalidity benefit in the case of non-

occupational accident/injury/disease resulting into permanent invalidity. To be eligible for invalidity benefit, a worker must be assessed with a total incapacity for work and not eligible for an early old-age pension. The minimum invalidity pension is set by the provincial and local governments according to the local standard of living. At least 40% of the insured worker's monthly wage is paid as invalidity pension.

Source: Social Insurance Law of the People's Republic of China 2010

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Convention 190 (2019) is about elimination of violence and harassment in the world of work.

China has ratified the Conventions 100 and 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. This definition covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Constitution of the People's Republic of China, 1982
- Labour Law, 1994

Equal Pay

The constitution of the People's Republic of China recognizes the principle of equal pay for equal amount of work. Labour Law, 1994 also requires employers to follow the equal pay for equal work principle.

The Protection of Rights & Interests of Women Law amended in 2005 requires that equal pay for equal work has to be applied to men and women alike. Women have to enjoy equal rights in receiving welfare benefits.

Source: § 48 of the Constitution of the People's Republic of China 1982, § 46 of Labour Law 1994, § 24 of the Protection of Rights & Interests of Women Law amended in 2005

Sexual Harassment

The Protection of Rights & Interests of Women Law amended in 2005 prohibits sexual harassment and the victim is entitled to complain to her employer and the relevant government bodies as well as bringing a civil suit in a court of law against the perpetrator. Special Provisions on Labour Protection for Female Employees, 2012 require employers to prevent and stop sexual harassment of female employees.

Sources: §40 of the Protection of Rights & Interests of Women Law amended in 2005; § 11 of the Labour Protection for Female Employees 2012

Non-Discrimination

In accordance with the Chinese Constitution, all Chinese citizens are equal before law. Discrimination is prohibited on the grounds of ethnic community, race, sex, religious belief as well as disability. Prohibited grounds for dismissing workers are: marital status; pregnancy; maternity leave; temporary work injury or illness; race; sex; religion; nationality/national origin; age; trade union membership and activities; disabilities; ethnic origin.

Labour law also prohibits discrimination in employment on the basis of ethnic group, race, sex, or religious belief. Women enjoy equal rights with men with regard to work and social security.

In accordance with the Employment Promotion Law, workers have the right to equal employment and to choose job on their own initiative in accordance with the law. Workers seeking employment cannot be subject to discrimination based on factors such as ethnicity, race, gender, religious belief, etc. employers are prohibited from engaging in any kind of discrimination. Employers are restricted from refusing to recruit women workers or increase the threshold for recruitment of women workers under the excuse of gender. Employment Promoting Law further prohibits employment discrimination on the ground of ethnicity, disability, disease and rural worker status.

If an employer violates above provisions, he/she may lodge a complaint the People's Court. If someone violates the law by impairing the legitimate rights and interests of workers and causing property loss or damage, he has to face civil liabilities and,

in some case, also criminal liabilities.

It is prohibited to discriminate against persons with disabilities in employment related matters. It requires employers to provide employees with jobs and posts that are suitable for them. The Law prohibits discrimination against disabled employees in their “recruitment, employment, change to permanent status, promotion, evaluation, remuneration, fringe benefits, work insurance, etc.”. It further requires employers to provide disabled employees with work conditions and work protections appropriate to the special characteristics of their disability. Employers are required to hire persons with disabilities (PWDs) as 1.5% of its total workforce. If PWDs are 1.5% of an enterprise’s workforce, it must make contribution to the state run “disabled persons’ employment protection fund”.

Source: §33 of the Constitution of the People's Republic of China 1982; §12 of the Labour Law 1994; §22 of Protection of Rights & Interests of Women Law amended in 2005; §3, 26-31, 62 & 68 of the Employment Promotion Law 2007; §30-40 of the Law on the Protection of Persons with Disabilities 2008; Regulations on the Employment of Persons with Disabilities

Equal Choice of Profession

Women cannot work in the same industries as men as it is prohibited to arrange female workers to engage in work down the pit of mines, or work with Grade IV physical labour intensity as stipulated by the State, or other work that female workers should avoid. Similar provisions are made part of the Special Provisions on Labour Protection for Female Employees, 2012.

In accordance with the Employment

Promotion Law, workers have the right to equal employment and to choose job on their own initiative in accordance with the law.

Sources: §59 of the Labour Law 1994; Special Provisions on Labour Protection for Female Employees 2012; §3 of the Employment Promotion Law 2007

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

China has ratified the Conventions 138 and 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Constitution of the People's Republic of China, 1982
- Labour Law, 1994

Minimum Age for Employment

Minimum age for employment is 16 years and no employing unit is allowed to hire worker workers under the age of 16 years.

Institutions that recruit minors under the age of 16 must go through the formalities of examination and approval in accordance with the relevant provisions of the State and guarantee their right to compulsory education. These include institution of literature and art, physical culture, and special arts and crafts. On illegal hiring of minors under the age of 16, the administrative department of labour orders to make corrections and imposes a fine thereon. If the circumstances are serious, the administrative department for industry and commerce shall revoke its business license.

In accordance with the Minor Protection Law, no organization may hire a minor under the age of 16 years. The Regulations on Banning Child Labour not only prohibit employment of children under 16 but also restrict children from engaging in private business activities. Employers are required to check the identity papers of minors before hiring them and maintain record of such employees.

Parents/guardians of minors under 16 should protect their physical and mental well-being, ensure their right to receive compulsory education and not allow them to be illegally employed.

Compulsory education age is 15 years under a 1986 Compulsory Education Law which requires nine-year compulsory education starting from the age of 6 years.

Source: §15 & 94 of the Labour Law 1994; §28 of the Minor Protection Law 1991; Regulations on Banning Child Labour 2002

Minimum Age for Hazardous Work

Minimum Age for Hazardous Work is set as 18 years and juvenile workers (between the age of 16 to 18 years) may not be engaged to work in the mines, work with Grade IV physical labour intensity, poisonous & harmful work and any other work that they should avoid.

The employer must provide regular physical examination to juvenile workers.

Source: § 64-65 of the Labour Law 1994

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

China has not ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Constitution of the People's Republic of China, 1982
- Labour Law, 1994

Prohibition on Forced and Compulsory Labour

Forced Labour is prohibited under the Labour Law and Employment Contract Law. If an employing unit compels workers to do work by means of violence, intimidation or illegal restriction of personal freedom; or humiliate, impose corporal punishment upon, beat, illegally search, or detain labourers; or cause serious physical or mental injury to labourers due to poor quality working conditions or a seriously polluted working environment, the responsible persons in the employment unit can be punished by the public security organ with a detention of 15 days or less, or a fine, or a warning; and where the case constitutes a crime, persons who are held responsible are investigated for criminal responsibility according to law.

Source: §96 of the Labour Law 1994; §88 of the Employment Contract Law

Freedom to Change Jobs and Right to Quit

Workers have the right to change jobs after serving due notice on their employer. For more information on this, please refer to the section on employment security.

Source: § 36-50 of Employment Contract Law

Inhumane Working Conditions

Working time may be extended beyond normal working hours of forty four hours per week and eight hours a day. Total hours of work inclusive of overtime must not exceed 9-11 hours per day for workers hired in work of intermittent nature. However, overtime hours must not exceed 36 hours per month.

For more information on this, please refer to the section on compensation.

Source: §36, 37, 41-44 of the Labour Law 1994

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize: Convention 87 (1948)
Right to Organize and Collective Bargaining: Convention 98 (1949)

China has not ratified both Conventions 87 & 98.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Constitution of the People's Republic of China, 1982
- Labour Law, 1994

Freedom to Join and Form a Union

Constitution and Labour Law provide for freedom of association. Trade Union Law 1992 and Labour law 1994 allow workers to join and form unions regardless of their nationalities, races, sexes, occupations, religious beliefs or education, and no organization or individual may hinder them from doing so or restrict them.

Trade unions are mass organizations of the working class formed by the workers and staff members on a voluntary basis. These unions represent the interests of the workers and staff members and safeguard the legitimate rights and interests of the workers and staff members according to law.

Only one "workers' organisation" is recognised in law, the All-China Federation of Trade Unions (ACFTU). According to the Trade Union Law, the establishment of any trade union organisation, whether local, national or industrial, submits to the trade union organisation at the next higher level for approval. Trade union organisations at a higher-level exercise leadership over those at lower level. The 2008 Labour Contract Law (LCL) along with several regional directives further facilitate the control of higher-level All-China Federation of Trade Unions (ACFTU) branches and officials over grassroots unions and worker representatives not yet in a union.

Employees may take part in the

“democratic management” of trade unions and trade unions may negotiate with employers regarding the protection of rights and interests, such as the wages and benefits.

Source: §7 & 88 of the Labour Law 1994, Trade Union Law 1992

Freedom of Collective Bargaining

Chinese labour laws do not contain the term the “collective bargaining.” However, it does include “collective negotiation” and “collective contract”. In accordance with Labour Law 1994 and Trade Union Law 1992, a trade union may represent workers in signing a collective contract with the enterprise on matters relating to labour remuneration, working hours, rest and vacations, occupational safety and health, insurance and welfare.

The collective contract is submitted to the congress of the staff and workers or to all the staff and workers for discussion and adoption. It is then concluded by the trade union, in an enterprise where the trade union has not yet been set up, such contract is concluded by the representatives elected by the staff and workers with the enterprise. Collective contract is submitted to the administrative department of labour. The collective contract becomes effective automatically if no objections have been raised by the administrative department of labour within 15 days from the date of receipt of the text of the contract.

A collective contract concluded in accordance with the law is binding on both the enterprise and all of its staff and workers. Provisions in CBA must not contradict with the provisions of the law or

public order or the public morals. In case, provision in individual labour contract contradicts with the collective agreement, the provision with better benefit is applied exclusively.

National Tripartite Conference for Coordination of Labour Relations has been set up as an advisory and consultative body for coordination on industrial relations issues. The Conference is tripartite in nature and is equally represented by the government, employer and worker sides. Similar tripartite consultation set up exists at provincial, municipal and district levels.

The Conference is established under article 34 of the Trade Union Law which requires the administrative departments for labour, at various levels of government, to establish trilateral consultation mechanisms on labour relations together with worker and employer representative organizations and jointly analyse and settle major issues regarding labour relations. The Conference functions under the Ministry of Labour and Social Security.

Source: §33-35 of the Labour Law 1994; §20 & 34 of the Trade Union Law 1992

Right to Strike

Right to strike is not provided under the law.

QUESTIONNAIRE

DECENTWORKCHECK.ORG

Check

Decent Work Check China is a product of Wageindicator.org
and www.wageindicator.cn



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>





05/13 Family Responsibilities

15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>





06/13 Maternity & Work

18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>





* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |













09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



10/13 Fair Treatment

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |




* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

China scored 42 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.