

### **Guidelines for Wages Cautioned**

Despite signs of economic recovery, millions of Chinese workers face wage cuts and freezes under new salary guidelines recently published by the government. While these guidelines are not mandatory, they are an important reference point for employers. Guangdong province became the first in the country to set the minimum salary increase at 0, or negative, this year. Shanghai, Shanxi, Qinghai, Yunnan, Jilin and Hunan all lowered the suggested rate of salary increase. Only Tianjin kept the rate of increase steady. In the Pearl River Delta city of Shenzhen, where thousands of export companies are based, the highest-level and medium-level benchmarks stand at 23,700 yuan (\$3,470) and 2,460 yuan per month, respectively, decreasing by 8.5 percent and 3.9 percent each from last year.

China established the salary guideline system in 1999 to provide employers with suggestions, based on local economic growth, price inflation and labor demand. The guidelines are particularly relied upon by foreign-owned businesses to set company salaries. Labor researcher Liu Junsheng, with the Ministry of Human Resources and Social Security, said many export businesses are struggling to survive with orders dropping from a year ago by 30 % to 80%. "Most of the employers can maintain the basic salary, but the employees are not getting overtime pay, one of the main income sources, due to the lack of orders," he said. More than 20 percent of businesses in Guangdong, closed last year as a result of the economic crisis. While economic growth has increased 7.9 percent as a result of China's RMB 4-trillion (\$586 billion) stimulus package, the unemployment situation in China is still "grave" and the global financial situation has not yet bottomed out.

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In a recent survey by the human resources firm Mercer, 12.5 percent of Chinese firms have frozen salaries. About half of those companies had also amended company pension plans, especially in the financial, manufacturing and pharmaceutical sectors.

As the Chinese economy started to feel the effects of the global slowdown, companies across the country have begun to register job cuts with local governments. Under the Country's Labor Contract Law (2007) job cuts in an economic downturn must be reported to labor authorities first. In Beijing, about 110 enterprises, mostly manufacturers of footwear, have filed job-cut reports for 22 percent of their employees or approximately 7,741 people. Thirty-five enterprises dismissed more than 50 people at one time. The Beijing courts have also reported 52,000 labor disputes this year, nearly twice as many as in 2008.

To strike a balance between corporate survival and individual development, the Beijing labor authorities have encouraged and supported financially-strained companies to negotiate salaries with their employees and to avoid dismissals through flexible hires and temporary leaves. In the events that employees are dismissed, they must have access to vocational training which would help them get re-employed.

### **Employer Loses Case to Employee holding Fake Degrees**

Mr. Lin was employed by a Shanghai transmission manufacturer in 2006. After experiencing a work related injury in 2007, Mr. Lin was later terminated by his former employer. During labor arbitration and later at trial, the Company showed that the education certificates provided by Mr. Lin for his job application were fake. The Company claimed against its former employee, all the salary paid to Mr. Lin during his employment, arguing that the labor relationship was established on deception and therefore should be deemed invalid. The Court pointed out that the labor contract shall be achieved and performed in good faith by both parties. Although it was inappropriate of Mr. Lin to provide fake education certificates, the contract was renewed and the salary raised in 2007 which proved that the Company was satisfied with his work performance. The company's claim was rejected.

### **Beijing for the first time sets a premium payment period for reimbursement of maternity insurance**

The Beijing Municipal Labor and Social Security Bureau noted in mid July that, from that time forward, only those who have paid maternity insurance premiums for a consecutive nine months are entitled to claims for various maternity expenses. This is the first time that Beijing has set a premium payment period for reimbursement of maternity insurance.

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In a recent press conference, the spokesman for the Ministry of Human Resources and Social Security said that the "Provisions on Enterprises Using Redundancy for Economic Reasons" is currently being amended to become consistent with the "Employment Contract Law" and its regulations. The Ministry of Human Resources is also studying legislation for labor dispatch services and for the protection of employees' rights, such as salary payments. Also being reviewed are salary assessment mechanisms, compensation schemes and other regulatory rules governing senior staff of the central enterprises.

In the first half of the year, there were a total of 349,400 labor cases that had been accepted by the labor and dispute arbitration committee, of which 317,000 cases went to trial. The Ministry will supervise those enterprises in economic difficulties, especially the export-oriented enterprises, in order to detect at an early stage, report and address any instances of major law violations, to guide the employment of these enterprises, and to better manage the labor relationship with the laid-off employees. The Ministry will also closely monitor situations in which unpaid workers remain unpaid during the 2 major festivals.

The spokesman for the Ministry of Human Resources pointed out that the next steps for the Ministry are the smooth execution of the labor contract law and its implementation regulations and also amending the Provisions on Enterprises Using Redundancy for Economic Reasons with a close analysis on labor transfer and salary distribution. The Ministry will also work with other relevant government departments to render opinions on the regulation of the salaries of leaders in the central nationalized enterprises and to set up a system of checks and balances regarding their salary and bonuses.

The recent financial crisis has greatly affected the Chinese employment market and has resulted in record unemployment rates. The Ministry of Human Resources and Social Security's recent endeavors in implementing the new "Provisions on Enterprises Using Redundancy for Economic Reasons" were aimed at addressing and regulating the employment market during the economic crisis and closing certain loopholes in the Labor Contract Law (2007) employment contract law and its implementing regulations. In addition, the new "Provisions On Enterprises Using Redundancy for Economic Reason" offers guidance for employees who seek severance and other forms of compensation and can aid in determining whether the employers decision to terminate the employee was in accordance with the law.

Page 2 of each month's edition of *China Labor Insights* is dedicated to a particular aspect of Chinese labor and employment law, focusing on the main issues affecting companies doing business in China.

### "Software Company Breaks Word, IT Engineer Gets Compensation"

Mr. Zhang, a talented young IT engineer, worked for an electronics company in Tianjing. The Shanghai Jingwei Software Company invited Mr. Zhang to move to their company, offering a very handsome package. Mr. Zhang resigned from his former employer, moved to Shanghai, rented an apartment, and took the required physical exam. Shanghai Jingwei then told Mr. Zhang that because of the world economic crisis, the project for which he was to be hired was cancelled and that they would no longer hire him. Mr. Zhang filed a claim for damages in the Xuhui People's Court. Shanghai Jingwei argued that there are no provisions regulating pre contract obligations in the Labor Contract Law, that the failure to establish the labor contract was caused by the occurrence of the world finance crisis, which was unexpected and beyond the company's control, and therefore the company should not be responsible for its failure to perform. The Court pointed out that liability for breach of pre contract obligations (liability of culpa in contrahendo) requires the party whose breach resulted in the failure to reach a firm contract, to make compensation to the other party. Although not expressly provided in the Labor Contract Law, it is an important principle stipulated in the Contract Law. Hence, the Court ruled against Shanghai Jingwei and awarded compensation to Mr. Zhang.

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