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Message from the Managing Director

It has been my sincere pleasure and privilege to practice law in China for more than twenty years. During that time, no area of law has changed more drastically than labor and employment. It continues to be our mission to work with you in managing your human resources and advising you in this area of law.

I once accompanied Mayor Richard Daley, a native Chicagoan like myself, to visit with Mr. Bo Xilai, the PRC Minister of Commerce. Mr. Bo said he would like to thank Chicago for two things: Labor Day (International Workers Day which commemorates the Haymarket Square Demonstration in Chicago), and the other being International Women's Day!

On that note, I would like to extend my warmest greetings to all of our clients, employers and employees, in wishing them a happy May 1st Labor Day.

Edward E. Lehman

2008 Labor Statistics Released

In April 9, the National Bureau of Statistics publicized its statistics of 2008 average salaries. The average annual salary of Chinese workers was RMB 29,229 (4,298 USD).

This represents a 17.2% increase over 2007 and includes base pay, allowances, overtime, and bonuses. In Shanghai, the average salary was RMB 39,502 RMB (5,809 USD) with a monthly salary of RMB 3,292 (484 USD), a 13.8% increase year-on-year. In Beijing, workers earned an average of RMB 44,715 (6,575 USD) or RMB 3,726 (548 USD) per month, a 12% increase.

These increases affect not only monthly payroll, but also the calculation of severance payments and termination penalties. Hiring and firing employees will now be more costly than in 2007.

Ignoring Labor Rules Leaves Chef in the Soup

French *cuisinier* Jean-Rene Masson entered a labor contract with the Shanghai Zetian Catering Company at the end of June 2007 and the Shanghai Labor Bureau issued to him an Alien Employment Permit with an expiration date of June 14, 2008.

After receiving his Employment Permit, Chef Masson began working for another catering company, Shanghai Yujia. However, neither Chef Masson nor his new employer Yujia revised the Employment Permit based on his change of employer. Shanghai Yujia paid Masson until May 31 at which time he returned to France to renew his work visa. After arriving in France, he had problems obtaining a work visa, at which time Yujia became frustrated and refused to renew the employment on July 9.

In August, Chef Masson initiated a lawsuit against Yujia in accordance with the Labor Contract Law (2007) claiming three months of salary (June-August) as well as severance compensation. The total claim amounted to 100,000 RMB (14,706 USD).

Shanghai Yujia admitted that Chef Masson had been employed by the company but argued that the procedures to alter his Employment Permit and renew his work visa should have been properly handled to create a valid employment relationship and therefore his employment had been terminated on June 1, based on Masson's default rather than the employer's.

The court ruled that the employment relationship between Chef Masson and Yujia was a "replacement working relationship" rather than a "direct working relationship", because the proper procedures were not followed when Chef Masson changed employers. Had Chef Masson and the employer followed the required procedures to change his employment, he would have been protected by China's 2007 Labor Law and enjoyed various rights, including the right to notice of termination and severance payments.

Finding that the proper procedures were not followed in changing Chef Masson's employment and that only an indirect "replacement working relationship" with Yujia existed, the court found that Chef Masson had no right to notice of his termination, had no rights to severance, and awarded him two weeks of earned salary.

Lehman, Lee & Xu is a top-tier Chinese law firm specializing in labor, corporate, commercial and IP matters.

Please feel free to contact us for advice on all China-related labor and employment issues.

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Court Upholds Dismissal Decision in Workplace MSN Chatting Case

In 2007, Miss Lee was recruited by a Shanghai technology company as a marketing specialist. In 2008, Miss Lee received a "termination notice" from her employer stating that she had violated company policy by chatting on MSN during working hours.

Losing her claim in labor arbitration, Ms. Lee filed a claim against her former employer in the Shanghai No. 2 Intermediate Court. In court, evidence showed that the employer issued a policy memo stating that privately chatting online through QQ or MSN would constitute material breach of the company's regulations and result in termination. The memo was issued to each employee, including Ms. Lee, who reviewed and signed it. Later, Ms. Lee was found to be chatting online through MSN and was promptly terminated.

In court, Miss Lee insisted that she was in fact discussing work matters which were not "private chat". Based on the testimony of several colleagues, the court found that Ms. Lee had engaged in "private chat" unrelated to her work. The court also found the policy to be valid, had been properly distributed to all employees, that Ms. Lee had received and reviewed the policy and that Ms. Lee had violated the policy and was properly terminated.