



Guide to Employment of Foreign Experts – Year 2002 REGULATION No.3

Contract Management

V. MANAGEMENT OF EMPLOYMENT CONTRACTS (1)

1. Foreign experts' rights and duties

Contracts will be signed when the foreign expert works in China. It will ensure the cooperation between the two parties and protect their rights. Both parties should fulfill the rights and duties, and any problems or disputes should be dealt with according to the contract.

Foreign experts must obey the Chinese laws and regulations set by the governments at every level while working in China. Cases concerning foreign experts will be handled by the judicial departments and public security organs concerned, with the help of the State Administration of Foreign Experts Affairs or the local offices of foreign affairs.

According to the "Civil Lawsuit Law of the People's Republic of China", the "Administrative Lawsuit Law of the People's Republic of China" and the "Contract Law", foreign experts enjoy the same legal rights and duties as the citizens of the People's Republic of China. If the courts of the concerned foreign expert's country employ restrictions over the rights and duties of the Chinese citizens in their countries, then equivalent restrictions will be employed over these foreign experts in China.

The rights and interests of foreign experts working in China are protected by the Chinese government. Foreign experts should carry out the agreements and employment contracts, which should provide clear items on foreign experts' insurance, medical care, holidays and other living conditions. If disputes occur, the experts can go to the arbitration board of foreign experts' contracts or to the local courts.

The payment of experts' personal income tax should be done according to the tax laws.

Foreign experts can enjoy preferential treatment given by the Chinese government and will be praised or awarded for their good performance by the governments at all levels or their host

institutions. The highest award is the "Friendship Prize" given by the Chinese government.

V. MANAGEMENT OF EMPLOYMENT CONTRACTS (2)

2. What are included in the new standard contract for employment of foreign cultural and educational experts?

The contents of the new standard contract for employment of foreign cultural and educational experts includes the following:

- (1) Terms of Contract;
- (2) Work assignment of employee;
- (3) Employee's monthly salary;
- (4) Employer's obligations;
- (5) Employee's obligations;
- (6) Modification, cancellation and termination of the contract;
- (7) Bails;
- (8) Arbitration.

3. What is the most appropriate time for contract signing?

In case the expert to be employed is overseas, formal contract should be signed before the expert comes to China. In case the expert to be employed is in China, formal contract should be signed before the expert takes the position.

4. What if one party of the contract requires modification of the contract?

In case one party of the contract requires modification of the original contract, agreement should be reached through consultation, and the modified, added or cancelled content should be confirmed in written form. Before the agreement is reached, the contract should be executed according to the original clauses till the expiration date of the contract.

V. MANAGEMENT OF EMPLOYMENT CONTRACTS (3)

5. What if one party of the contract requires termination of the contract?

In case the employee requires termination of the contract due to force majeure, certificate issued by relevant institution should be presented, and with employer's consent, the employee should bear the expenses of leaving China. Should the employee terminate the contract for no reason, he/she should pay the bail to the employer in addition to the expenses of leaving China.

In case the employer requires termination of the contract due to force majeure, with the employee's consent, the employer should bear the employee's expenses of leaving China. Should the employer terminate the contract for no reason, in addition to the employee's expenses of leaving China, he/she should pay the bail to the employee.

6. What if one party of the contract requires signing a new contract?

In case one party requires signing a new contract, he/she should propose to the other party ninety days before the expiration of the original contract, and the new contract should be signed with both parties' agreement through consultation.

V. MANAGEMENT OF EMPLOYMENT CONTRACTS (4)

7. Under what circumstances should the parties pay the bail (credit bail)?

All employees self-recommended or introduced by others, before signing the contract, should pay foreign expert intermediary a bail of 600-1000 US dollars.

8. Under what circumstances may the employer terminate the contract?

The employer has the right to inform in written form the employee of the termination of the contract under the following circumstances:

(1) The employee fails to execute the contract or his/her execution fails to meet the contracted conditions, and refuses amendment after being pointed out by the employer.

(2) As the doctor diagnosed, the employee is unable to continue the normal work after a sick leave for 30 continuous days.

9. What if the cultural and educational expert refuses to sign the contract after coming to China?

In case the employee fails to sign the contract for some reason before coming to China, and refuses to sign the contract without proper reason after

arriving in China, the employer may firstly make efforts to persuade him/her to sign the contract. Should the persuasion fail, the employer will state to the employee that if the employee refuses to sign the contract, the employer will take the following measures:

(1) During the term of the contract, keep the salary as originally negotiated, there shall be no salary raise, no preferential treatment entitled to foreign cultural and educational experts, and not Foreign Experts Certificate;

(2) There shall be no holiday subsidy or dismissal subsidy;

(3) Upon the expiration of the employment period, both parties naturally end the employment relation, and no renewal shall be considered.

10. What if a foreign cultural and educational expert terminates the contract without permission and takes a position in another institution without permission?

A foreign cultural and educational expert should strictly fulfill the contract while working in China, and should not terminate the contract and take a position in another institution without permission. In case the employer encounters this situation, he/she should report to the higher level management department and notify the new employer to take appropriate measures to solve the problem. For those who seriously affect the work of the original institution and refuse to accept the dissuasion, the employer may apply to public security department to shorten their residence period in China.