

## Understanding China Employment Contracts

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In attaining legal employment in China, teachers will be required to sign an employment contract with a school. Unlike the west, written contracts are not always viewed as being fixed agreements in China, and there is often some degree of interpretation of the wording of contracts. When these interpretations vary considerably, conflicts are likely to arise. For this reason it is important that any employment contract is clear and understandable by both parties.

Although it does not exclusively address the area of Employment Contracts, the Contract Law of China is a rather lengthy document that protects the rights of both parties that enter into a contract.

### Chapter I - Common Provisions

#### Article 1

For the purposes of protecting the legitimate rights and interests of the parties to contracts, maintaining the socioeconomic order and promoting the construction of socialist modernization, this Law is enacted.

#### Article 2

For the purposes of this Law, a contract is an agreement on the establishment, alteration or termination of civil right-obligation relations between natural persons, legal persons and other organizations of subjects with equal status.

Agreements on such relations of paternity as marriage, adoption and guardianship shall be governed by the provisions of other laws.

#### Article 3

The parties to the contract have equal legal status, and a party may not impose its will on the other party.

#### Article 4

The parties shall, according to law, have the right to enter into a contract on their own free will, and no unit or person may unlawfully interfere.

#### Article 5

The parties shall observe the equitable principle in defining each other's rights and obligations.

#### Article 6

The parties shall abide by the doctrines of good faith in exercising their rights and performing their obligations.

#### Article 7

The parties shall, in concluding and performing the contract, abide by laws and administrative regulations, respect social morals, and may not disrupt the socioeconomic order or impair the social and public interests.

### **Article 8**

A contract legally entered into has the legal binding force on the parties. The parties shall perform their obligations as contracted, and may not unilaterally modify or terminate the contract.

Chapter one of the Contract Law covers the basic provisions of entering into contracts in China as can be seen above. The law clearly states that both parties to the contract have equal rights, and while this may be true in theory, the various aspects of foreigners retaining the legal right to remain in the country may overshadow the rights of these foreigners to protection under the Contract Law. Basically, although foreigners are afforded equal rights as Chinese under this legislation, it can prove difficult to fight a breach of the Contract Law from out of the country. Unfortunately, far too many teachers who encounter serious contract breaches find themselves stranded outside of China due to employer influenced problems in other areas such as visas and work permits.

Theoretically, foreigners can fight contract breach, the most common of which is no doubt encountered with Article 8 above. Chinese often view contracts, even those that are written down, as being fluid agreements that can be changed. This difference from the western understanding of written contracts often leads to conflict as the Chinese party to the contract may misconstrue discussions about changes to the contract as being confirmed changes. It is therefore helpful for foreign teachers to know that the Contract Law clearly states that changes cannot be made to the contract unless agreed to by both parties.

### **Article 10**

The parties may, when concluding a contract, resort to the written form, verbal form or any other form.

If the written form is required by laws or administrative regulations, it shall adopt the written form. If the parties agree to adopt the written form, it shall adopt the written form.

### **Article 11**

The written form means any mode that the information contained therein is capable of being reproduced in tangible form such as memorandum in writing, letter or text in electronic data (including telegram, telex, facsimile, electronic data interchange and e-mail).

As is the situation in most countries, both written and verbal contracts are equally binding from a legal standpoint, this is supported by Article 10 of China's Contract Law. The problem of course is that the content or even existence of verbal agreements is far more difficult to prove than is the case for written agreements.

It is reassuring to note that government in China recognizes the content of emails in this regard, considering that a majority of foreigners now use this medium to make contact with schools. Teachers are encouraged to retain any and all documentation however insignificant it may seem, until such a time as employment is complete and work with a new employer has been finalized. You never know when you may need the confirmation that such notes can give.

### **Article 41**

If a dispute arises over the understanding of a standard clause, an interpretation shall be made in accordance with common understanding. If a standard clause has more than one interpretation, it shall make an interpretation unfavorable to the party providing the clause. If a standard clause is inconsistent with the non-standard clause, the non-standard clause shall be used.

Article 41 above is interesting, as it would seem to side with the foreign teacher in the case of a genuine dispute involving differing interpretations of clauses within the contract. The article clearly states that in certain cases of dispute over interpretation of the contract, the party providing the clause (most often the employer) is

to be held at a disadvantage. This is most likely aimed at ensuring that those writing contracts don't become so vague that the clauses in the contract become ambiguous. A good contract should be clear in its obligations upon those entering into the agreement and this clause would go a long way toward keeping people honest.

#### **Article 52**

A contract is invalid under any of the following circumstances:

1. if a party makes the contract by means of deceit or coercion to impair the State's interests;
2. maliciously conspiring to damage interests of the State, the collective or the third party;
3. seeking to conceal the illegal goals under the disguise of legitimate forms;
4. doing harm to social and public interests; or
5. violating the mandatory provisions of laws and administrative regulations.

Article 52 clearly states that contracts with illegal clauses or clauses involving illegal activities would be rendered invalid by such clauses. This is a particularly important clause for teachers that find they are working illegally without their prior knowledge that they were in fact illegal. It is likely that teachers could use this article to argue for a release from any contract containing illegal clauses, and without any penalties being incurred. After all it seems reasonable that if a school tried playing hard ball in this situation that the foreign teacher could use the content of this article to suggest that it may be in the best interests of the school to allow the teacher to leave quietly and without the involvement of the authorities, and that the only way to do this would be to ensure that all outstanding monies were paid. Schools and teachers who can work things out without the need for involving third parties are more likely to achieve a win-win situation for both parties.

This article ties in nicely with Article 56 of the Act, which states that an invalid or rescinded contract does not have any legally binding force from the outset of that contract. The second part of Article 56 goes on to complicate matters by suggesting that in some instances only the illegal clause is rescinded. It does seem however that it may be arguable that contracts based upon illegal employment are not enforceable. Unlike a single illegal clause in a contract, a contract based upon an illegal act could likely be considered null and void. This fact could be an advantage for teachers who are being pursued by an illegal employer for breach of agreement; however the flip side is that teachers pursuing schools who breach such an agreement are likely to be left high and dry.

Equally, teachers may be able to use this article to argue against the validity of any clause in a contract that is illegal or pertains to illegal acts.

#### **Article 56**

An invalid or rescinded contract does not have the legal binding force from the beginning. If part of a contract is invalid and this part does not affect the validity of other parts, other parts continue to be valid.

Articles 54 and 55 deal in more detail with rescinded clauses and contracts.

#### **Article 54**

A party has the right to request a people's court or an arbitration organization to alter or rescind the following contracts:

1. being concluded out of substantial misunderstandings; or
2. being obviously unfair when the contract was concluded.

If one party makes the other party to conclude the contract against his true will by means of deceit, coercion or by taking advantages of the other's difficulties, the party suffering a loss has the right to request a people's court or an arbitration organization to alter or rescind the contract.

If the parties applies for an alteration to the contract, the people's court or arbitration organization may not rescind the contract.

## Article 55

The right to rescind ceases to exist

1. if the party with the right to rescind has not exercised it within a year from the date on which he knows or should know the reasons for rescission; or
2. if the party with the right to rescind disclaims it by explicit expression or his own act after he knows the reasons for rescission.

## Contract A

The following is an employment contract offered by a private institution in the Zhejiang Province of China. It is a well-written and comprehensive contract that lays out the responsibilities of both parties in a clear yet concise manner. Of note is the fact that the English version of the contract contains very few errors.

### 1. Employer

1.1 Location: *[Admin - Full address of employer deleted]*

#### 1.2 Terms and Conditions

The school shall provide assistance and guidance where appropriate to ensure an enjoyable and a fruitful experience for the teacher/employee.

The above clause is good in that it contains the full street address of the employer. This is a fundamental but often neglected part of any contract. Many employment contracts merely state the English name of the institution offering employment to the teacher, yet this is inadequate as these English names may mean very little considering very few if any schools actually register these English names.

*NB: Contracts containing the registered name of the institution and either the registered address of the institution or the address of work should be stated clearly in an employment contract.*

### 2. Visa

2.1 The employee/teacher shall be responsible for having a fully 60 days tourist visa from the date of the contract have been affected, if not, the employee/teacher shall be responsible for all of the cost for requiring another tourism visa for the term of the employment.

2.2 After the employee/teacher begins to teach at the school, the employer/school shall be responsible for acquiring the working permit for the employee/teacher. The employer/school will be only responsible for the processing working permit; the school will share 50% of the cost of application for visa, and the employee/teacher will be responsible for the rest of the cost (it includes all of necessary cost for the required documents preparation).

2.3 It usually takes approximately 75 days for the employer/school to obtain the Working Permit for the employee/teacher. The employee/teacher is responsible for hand in all of required documents (original or copy of college diploma, 6 2? pictures, resume, health checking form etc) to the employee/school (for working permit processing purpose) within two weeks after the contract has been signed; if not, the employee/teacher has to take all of the relative responsibility. If the employer/school is not able to get the working permit for the employee/teacher after 75 days then the employer/school will be responsible for covering the round trip ticket

cost for the employee/teacher to get another tourism visa in case is needed

2.4 If the employee/teacher fail to complete this yearly contract, employee/teacher will have to cover the cost of all application for his/her own working permit. It will be deducted from deposit.

The above clause is rather problematic for a few reasons.

Firstly, it is based upon the premise that the teacher should arrive in China on a tourist visa. While arriving in China on a tourist visa, free of any contractual commitment to any one school or institution, certainly has its advantages, teachers should be aware that it is illegal to undertake any work on a tourist visa. Any teacher considering the above contract should take into account the fact that while arriving on a tourist visa gives the teacher the opportunity to first check out the school prior to making any contractual commitments, in turn the school also has the opportunity to check out the teacher free from any obligation toward that teacher.

Secondly, the clause suggests that the costs of the visa be borne equally by both parties. While this in itself is not such a concern, it is worth noting that many schools will entertain the suggestion that the school cover the costs of the work permit application. The requirement in Clause 2.4 of the contract that suggests that the costs borne by the school would be recovered through deductions in the deposit paid by the teacher should the teacher prematurely breach the contract further detract from the offer from the school to cover some of these costs.

Most importantly though is the fact that Clause 2.3 suggests illegal activity on behalf of the teacher. It is illegal for the teacher to work prior to obtaining a work permit. The institution offering this contract suggests that it generally takes 75 days to secure the work permit. This effectively means that the foreign teacher would be teaching at the school illegally, for the first 75 days of their employ there. This is not in the best interests of the teacher, and as such agreement with this term cannot be recommended. Illegal clauses in contracts are unenforceable and non-binding, but this is of little relevance in this case. Any teacher accepting the above terms would be vulnerable to a fine and deportation if caught working illegally. Additionally, the teacher would be very vulnerable to abuse of this contract by the school as the school could quite possibly turn around at the end of the 75 day period and discontinue the contract for any reason, and even without payment. As the contract up to that time was based upon the illegal employment of the foreign teacher, there is very little legal recourse that could be sought.

*NB: Teachers considering a contract containing clauses such as the one above are best advised to request that the work permit be prepared prior to any work commencing. Many teachers insist on this being done prior to arriving in the country, and this is certainly the best way to ensure that only legal work is being offered. Unfortunately this requires commitment to a school or institution that a teacher may know very little about. It is really a trade off that each individual teacher needs to make for him or her self.*

### 3. Salary, bonus and benefits

3.1 The employer/school sponsored the employee/teacher must maintain a total monthly salary of 5000 RMB per month excluding deductions and absences without pay. The teaching hour is maximum 26 hours per week. Payday will be the 5th of every month.

3.2 The salary for first working month: the employee/teacher will be paid by the numbers of her/his actual working days.

3.3 There will be a bonus, \$ 1000 RMB, awarded to the employee/teacher at the completion of 1-year contract.

3.4 Teacher will have benefits as follow:

Housing: accommodation will be provided free of charge by the employer/school. We will be giving 800 RMB per month for the compensation of accommodation when the school fail to provide housing for the employee/teacher.

Air fare: round-trip air fare paid by employer/school at the completion of 1-year contract, and the school reserved the right of booking round trip ticket (not more than \$ 6000 RMB).

The above clause is good in that it outlines the exact pay per month, the maximum number of teaching hours, and the date that salary payment is to be made each month. These are of course fundamentals of any good contract, but it is surprising how many contracts fail to make mention of these things. Pay ranges (e.g. RMB 3,000-5,000), and hourly ranges (e.g. 20-25 hours a week) have no place in an employment contract as they are open to interpretation and are likely to lead to conflict when one party tries to exercise their rights according to their interpretation of the contract, much to the chagrin of the other party.

Bonuses such as the one offered in Clause 3.3 above are best not taken into consideration when accepting any position. There are so many ways that a school can avoid paying such bonuses that it is often best to ignore these when undertaking calculations. If the bonuses are provided as promised in the contract, the teacher can consider them as a nice surprise. Relying upon the payment of these bonuses however is likely to lead to disappointment.

As will be discussed later, it is important to note that the teacher only actually receives payment of RMB 4,000 per month, according to the monthly deposit deduction outlined in Clause 5.7 of the contract. This is somewhat unclear in the contract and could easily be overlooked by a teacher, indicating how important it is for teachers to read employment contracts carefully.

#### 4. Employee's work responsibilities

4.1 The employee/teacher has to arrive to school 30 min before class start according the class schedule issued, for outside teaching, 60 min before class start is required. The employee will be responsible for class preparation, and complete the teaching log in or outside the school.

4.2 The employee/teacher will be responsible for the class preparation on daily base; the employee/teacher will be asked to devise his/her own lesson plan and hand in to the employer/school a week before the class start. The employee/teacher will be responsible for correcting the students' work, and designing relative handouts for the classes.

4.3 The employer/school shall provide the form of lesson plan, teaching log, and the book for the employee/teacher.

4.4 Break time: depends on the employer/school's schedule, there is 5 to 10 minutes break time between the classes. The employee/teacher shall go back class on time.

4.5 During the contract period, the employee/teacher is required to attend in special promotional events for the employer/school (i.e. a Christmas party, teaching demo, field trips etc). This may fall outside regular teaching hours, the teacher has to co-operate with the employer/school within promotional events.

4.6 The employee/teacher shall attend meeting, orientation and training sessions as and when required by the employer/school. The employee/teacher will be required to attend all training class or course with the given time.

4.7 The employee/teacher shall assist school to do some administration work, such as: telephone testing, field trip, school promotion, learning presentation, and parents meeting etc.

4.8 The employee/teacher shall be responsible for his/her own meal during the school time.

Requirements for 30 or 60 minutes of lesson planning outlined in Clause 4.1 would be somewhat unreasonable if this time were unpaid. A requirement of 10 to minutes would generally be reasonable. As this contract deals with salary based payments, then this clause isn't too much of a concern. The same holds true for the requirement for homework correction as outlined in Clause 4.2. Teachers who accept work on an hourly rate basis would be well advised to be wary of such requirements in a contract.

Clause 4.5 relates to a teacher requirement that is often seen in employment contracts for teachers. While this clause in itself doesn't present too much of a problem, it could be beneficial to have the school outline which events are covered by this clause and when it is expected that each of these events will be held. It seems only fair that as the employer expects the teacher to plan lessons weeks in advance, that the school should also plan the event calendar in advance. Teachers should be aware that as there are stipulations as to how many of these events there are, what constitutes an event and when these events will be, it is quite possible that there could be conflicts at a later date.

Clause 4.6 presents a similar problem as 4.5 due to lack of information. Teachers would be well advised to ask for a confirmed training schedule upfront, prior to signing a contract on these terms.

*NB: Contracts with ambiguous clauses should be avoided. Teachers are advised to either negotiate terms such that specific information is provided in the contract, or avoid these types of contracts altogether. Often*

*the expectations of the employer and the employee will vary and this may lead to contract disputes and dissatisfaction.*

## **5. Responsibilities of the employee**

5.1 The employee/teacher shall follow to all policies, rules, and regulations of the employer/school. And, the employee shall establish harmonious relationships with others in the school and outside of the school.

5.2 Once the employee/teacher breaks the contract, or leaves his/her teaching position in the contract duration without the permission of the employer/school, the employer/school shall reserve the right to take legal action and report to the local authorities.

5.3 The employee/teacher shall verify all start and finish time by using a time card. The employee/teacher shall arrive to the school and start to work on time; late and early leave without the permission are not permitted, if so, the employee/teacher shall be punished according to the relative rules.

5.4 Regulations for leave of absence: for leave of absence, the employee/ teacher shall give the employer/school 5 days advance notification, and it shall be approved by the employer/school. If the employee/teacher had sick leave for more than three days, the doctor note must be shown to the employer/school; if the employee/teacher had sick leave for more than a month, then his/her employment status will be automatically determined as on leave without pay.

For private leave and sick leave: The employee/teacher shall submit application for leave of absence, defined as an absence without pay to the employer/school.

5.5 A leave of absence without the employer/school's permission shall consider as neglect duties; 1/10 of the monthly salary shall be deducted from the employee/teacher's monthly salary for neglect duties.

5.6 The employee/teacher shall find a substitute teacher to cover his/her position for a leave of absence for special reasons, i.e. family emergency etc. In the absence duration, the employee/teacher's daily salary will be paid to the substitute teacher.

5.7 In the event that the employee/teacher wishes to resign prior to completion of the contract, a formal resignation letter shall be submitted to the employer/school no less than 60 days before the employee's last day of the work, which should be specified. If the notification is less than 60 days in advance, then the employee/teacher shall be fined one monthly salary and no bonuses shall be paid. For this reason the school will save 1000 RMB every month for as long as three months as a refundable deposit, once the employee/teacher complete the contract, the deposit will be return in total without interest.

5.8 The employee/teacher shall be dressed and groomed in a professional manner; sandals, vests, shorts, and jeans with holes are not acceptable.

5.9 Both parties, the employee/teacher and the employer/school, are required to declare his/her wish for contract re-newel at least 45 days before the end of the contract.

5.10 If the employee/teacher violates any of the articles/rules in the contract, the employer/school may issue two verbal warnings; and if there is no improvement after two verbal warnings, a written warning will be given, the employee/teacher then shall pay fine of 150 RMB per article, for rule breaking. The employer/school may suspend/dismiss the employee/teacher after two written warnings.

5.11 Due to the copyright, teaching materials shall not be used outside the place of employment without the permission of the employer/school.

5.12 After the contract been signed/affected, the full time employee/teacher shall not be allowed to work for the third party; otherwise, the employee/teacher shall pay a fine, one month's salary, to the employer/school, and the employer/school shall dismiss the employer/teacher.

While Clause 5.2 may seem reasonable from the schools point of view, it does leave teachers somewhat vulnerable should the employer choose to abuse the power granted to them under this clause. In the absence of any reference to warnings being given, nor the severity of the breaches considered here, this clause would make it very easy for the employer to get rid of the employee with very little reason. For example, an employee nearing the end of their contract term could be terminated for the slightest infraction, and quite possibly something that the employee was not even aware constituted a breach. This could be done by an employer who was satisfied with the teachers work, but who wanted to avoid the payment of bonuses and benefits outlined as only being available on completion of the contract term. Teachers should negotiate for the conclusion of words along the lines of "repeated breach after a warning notice has been issued". It would also be wise to determine which breaches are covered by Clause 5.2 and which are covered by Clause 5.10.

Clause 5.6 could prove to be unworkable, and in the situation referred to - family emergency - may prove to be unreasonable. In most cases a family emergency could happen at any time, and with short notice. For teachers in remote areas, it may prove difficult to find a substitute teacher to take their place, and the contract doesn't seem to offer any leeway in this regard. While this clause is not entirely unreasonable it could present some problems should a family or other personal emergency arise.

The deposit collected according to Clause 5.7 is quite high, and in our opinion, unreasonable, as it constitutes 20% of the teachers' salary. Although it is good that the teacher can resign the position with notice (60 days) without penalty, the penalty for breach should certainly not be as high as 20% of the teachers' salary. As the other benefits offered under the contract are also unlikely to be made available in the event of breach, then the real amount of this penalty could easily come to 30-40% of the total salary package for the year. It is unlikely that the school would negotiate these terms, but a penalty (including lost benefits and bonuses) should not exceed 10% of the teachers' earnings. The penalty is meant to act as a deterrent to teachers leaving early, and ensure that the school suffers no economic losses as a result of the teachers' decision to breach. It is not meant to cause severe financial hardship to the teacher. In some cases the levying of unreasonable penalties may be reversed if a complaint is lodged with the relevant authorities.

The exclusive status afforded by Clause 5.12 is quite a common clause in employment contracts and not unreasonable provided that the salary or number of hours offered by the school afford the foreign teacher a reasonable living. In cases where teachers are paid by the hour with no guarantee of actual hours given then such a clause may prove to be unreasonable.

## 6. Health Insurance

6.1 Before and during the Health Insurance processing period, the employee/teacher shall have his/her own health insurance.

6.2 The employer/school shall assist the employee/teacher in obtaining Health Insurance after the employee/teacher has his/her working permit, 60 RMB per month will be paid by school.

Due to the variability in the quality of medical care offered in China, and the variability of medical coverage offered by schools, all teachers working in China are advised to maintain a comprehensive medical insurance policy that includes medical evacuation to Hong Kong in the case of a severe or life threatening emergency. This type of policy can act in addition to any medical coverage that the school offers.

## 7. Income Tax

Employee/teacher must obey the Chinese tax laws.

A fairly standard clause that really goes without saying. Of note is the fact that the responsibilities under this clause do not extend to the employer, when in fact there seems to be no reason why they shouldn't extend to the employer.

## 8. Teacher's Miscellaneous Responsibilities:

8.1 The employee/teacher shall be responsible for all his/her legal and financial obligations. The employee/teacher shall be responsible for its own insurances, i.e. travel insurance, life insurance, injury insurance etc.

8.2 The teacher might experience cultural shock and unbearable weather conditions. The school will provide

assistance and guidance whenever appropriate. It is in the teacher's best interest to respect Chinese customs and observe China laws.

8.3 Suggestions / comments / regarding the management's policies / curriculum /administration, etc. is most welcome and appreciated. However, depending on the circumstances, these might or might not be accepted for implementation for various reasons. The teacher should commit to follow the school's policies and the principal's guidance, and strive to establish harmonious relationships within and without the school during the contract period.

The above clauses all show an understanding of the difficulties faced by foreign teachers working in China. These reflect well upon the employer, and suggest that in the very least, the employer is aware of the personal problems that some teachers face living in China.

## 9. Amendments

This agreement can be amended if both the school and the employee agree upon new terms.

This final clause is a standard but integral part of any employment contract, yet it is all too often ignored by employers in China who often fail to see the need to put such changes and amendments in writing. Teachers are encouraged to insist that employers make a note of any alterations to the contract and attach these to the contract, no matter how minor or in whose favor each of these amendments may be. In times of conflict teachers who have abided by this recommendation will be in a much better legal position than those that felt that such documentation was unnecessary.

### Contract B

The following is an employment contract offered by a small chain of private English schools, with a head office in Hong Kong. This is a well-written and comprehensive contract, that lays out the responsibilities of both parties in a clear yet concise manner. Of note is the fact that the English version of the contract contains very few errors.

This agreement is between [*Admin - School name deleted*] (the School) and-- \_\_\_\_\_ (the Teacher), passport number: \_\_\_\_\_, hereby agree that the Teacher's terms of employment are as follows:

Unlike Contract A above, this contract lacks clear definition as to who the employer really is. In some cases, it may prove difficult to undertake legal action against an entity solely upon its English name which may or may not even exist or be recognized under the law in China. Teachers would be far better off signing an agreement when the employers' registered Chinese operating name and address are identified on the documentation.

#### Nature of Employment:

1. The Teacher is employed to teach English. The Teacher may also infrequently be required to undertake additional teaching or participate in promotional activities by the school, such as interviews, demonstrations, the production of media presentations, public meetings, etc.
2. Promotional activities occur irregularly and within the Teacher's contracted period of employment.
3. The conditions of the Teacher's employment are subject to the laws of the People's Republic of China.

This clause is somewhat open as to what may or may not be considered a work responsibility under the contract. The nature of such clauses that allow for differing interpretation by different parties is probably the main cause for disputes involving contracts, as one party reads the terms to mean something, while the other party has a completely different take on things.

#### Employment Period:

The School will employ the Teacher at \_\_\_\_\_, People's Republic of China, from \_\_\_\_\_ 2004 to \_\_\_\_\_ 2005.

A pretty standard clause that is applicable to chain schools as teachers may required to teach at a certain branch. It is important that the actual branch school the teacher works at, is the actual school named on the contract as this is the only way that the authorities can determine the legality of the teachers work at that school.

#### Working Hours: The Teacher

1. shall teach a maximum of 20 hours within five working days of each week.
2. shall undertake lesson planning, at home or in the School's office, during approximately 6 hours per week, as part of the contracted period of employment;
3. shall attend all special functions such as parent's meetings, school parties, demonstrations, graduations, ceremonies and outings, etc within the contracted hours.
4. shall not undertake private tutoring without permission of the School Director;
5. shall have two days off each week, but this may depend on the school curriculum and may not necessarily be two consecutive days;
6. shall make good preparation and present to classroom in time; being late for class is not allowed.
7. In the event that a Teacher misses lessons or does not attend the School during contracted working hours, the school may deduct payment for the lost time.
8. may be requested to work at various school locations but no more than three different schools.
9. shall take part in 3 to 5 days of training in teaching methods under the Chinese context, before actual independent teaching.

The above are all pretty standard clauses.

Number 5 is of some concern as it doesn't stipulate which days will be taken off. It would be important for a teacher to know in advance and have these two days off fixed by way of a schedule, rather than just randomly chosen each week. This concern could be addressed by way of an attachment to the contract once the teachers teaching schedule has been fixed.

Number 7 is unclear in that it does not mention the penalty for tardiness. The penalty amount should really be stated in the contract as this type of penalty can be quite variable between schools. Some schools charge a penalty equal to a portion of the teachers hourly rate, others however deduct a percentage of the monthly salary. It would be unwise to enter into a contract without such penalties being clearly outlined upfront.

#### Remuneration:

1. The school will pay the Teacher \_\_\_\_ Yuan RMB per calendar month, free of Chinese income tax. The Teacher's remuneration will be paid on the 7th day of the month following the month in which teaching was done, with the exception of the final month of the Teacher's employment when payment will be made on the last day of teaching.
2. Teacher's will be paid for Chinese public holidays and approved holidays that fall within the period of their employment. (Usually China has 21 days off as public holidays per academic year May 1st, 7th; October 1st, 7th; New Year Day; Chinese Lunar New Year 5 days off around end January or middle February); there will be up to 20 days of unpaid periods, at irregular intervals, when the schools are on examination periods during the contract period.
3. The School will pay a rate of 60RMB per hour for any extra teaching hours worked in any set week above 20 hrs per week.
4. the teacher will not be paid during the 3 to 5days of the training period.

It is not known why the school offers a wage in the contract 'free of Chinese income tax'. This question would be worth raising with the school. Some schools qualify for tax free status but it is doubtful that this is one of them. It is also possible that the school has attempted to simplify the payment process by paying taxes on behalf of the teacher and factoring this into the salary offered to the teacher by first deducting these taxes and

then offering the teacher an after tax salary. If this is the case then the teacher should ensure that he or she secures a pay slip each month that notes the amounts of any taxes withheld by the school to ensure that there are no later tax problems or misunderstandings.

A possible negative explanation for this clause could be that the school is not paying taxes to the government on the teachers wage and therefore doesn't make mention of tax deductions. As the position is being offered illegally and no taxes are being deducted then the salary is offered as tax free. This is obviously illegal if indeed it is the reason behind this clause, and teachers should be very wary about getting involved with schools that offer contracts with illegal clauses.

#### Visa for working in China:

The Teacher may enter China on a tourist visa to commence employment. The School will make arrangements to ensure that the Teacher is lawfully employed by providing the Teacher with an appropriate visa within 30 days of the Teacher's arrival in China. The School will provide F/Z visa and Residence permit for The Teacher at the cost of the School.

This clause may or may not be an area of concern for teachers.

It is illegal for teachers to work on a tourist visa. Although there is some scope for teaching under an F visa, obtaining an F visa for the purposes of teaching ongoing classes or long term is not the intended use of this visa. As such teachers working under such a visa may be declared to be working illegally by the relevant authorities. The Z visa is the only visa guaranteeing legal work status for teachers who are teaching in China on an ongoing basis or for a long term.

Some people advocate that teachers insist upon a Z visa being provided prior to the teacher entering the country, so that the teacher can enter the country and start teaching legally from the outset. This is the only way to guarantee fully legal work in China, and helps teachers to avoid positions that offer a Z visa but fail to deliver this once the teacher arrives. The downside to this procedure is that the teacher needs to commit to a school that they may never have visited.

Other people advocate an arrival on a tourist visa thereby enabling teachers to check out schools prior to making any commitment. This can be good in avoiding positions that don't offer what they promised upfront, but this leaves such teachers open to the potentiality of being brought into the country on the promise of a Z visa that never materializes.

Either way, teachers should not commence work for a school until such time as the Z visa has been processed. This is the only way to ensure that you are working legally, and will be protected by the rights afforded to employees.

The acceptance of the clause contained in this employment contract would need to be based upon any research the teacher conducts upon the school. If the school is of the type that brings teachers here on a false promise of a Z visa, only to fail to deliver this, then researching the school should reveal this to be the case. If on the other hand the school legitimately wants to give the teacher a chance to check out the school, and the school the chance to check out the teacher prior to any formal commitment being made, then research on the school should reveal that they do indeed come through on their promise of a Z visa.

#### Air-Ticket:

1. Upon completion of 6 months' satisfactory service, the School will reimburse half the Teacher's actual one-way economy airfare. The Teacher needs to provide the School with a receipt or proof of purchase.
2. Prepaid airfare is an option available for those without the necessary means to finance their trip.
3. At the completion of the full twelve months of the contract the School will reimburse the Teacher's

actual return economy airfare, to a maximum of 7000 Yuan RMB

The reimbursement of ticket costs at the end of the contract period is pretty standard, as is the amount being offered by this particular school.

Of note here is the fact that the school is willing to consider requests for upfront reimbursement of airfare costs, which is not inline with the industry standard.

#### Housing:

1. The School will provide the Teacher with a furnished apartment, free of charge, for the period of the Teacher's employment by the school.
2. The Teacher must pay for the bills of gas, water, heating, electricity, telephone and housing management fee by him/herself (for a Chinese family of three members, bills such as those for a two-bedroom apartment, a kitchen and toilet will be around 300 Yuan RMB/month).
3. The School will provide the cooking means, including the provision of necessary equipment and utensils for the Teacher to cook meals.
4. The School shall ensure and pay for the installment in the apartment of a connected telephone; telephone bills occurring after checking-in will be paid by the Teacher.
5. The Teacher will share an apartment with another Teacher, but each Teacher will have their own bedroom.
6. Couples will not share a flat with other Teachers
7. Teachers are not allowed to find another flat at their own expense, but if the Teacher finds it really unbearable to live in the flat that the school provides, communication with the School Director is needed and a decision should be made accordingly.
8. The Teacher shall obey the rules and regulations of building management.
9. The Teacher shall take care of public property on the apartment grounds and if anything is broken/damaged, the Teacher will pay for repair or replacement.
10. The Teacher shall not let other people stay at the apartment without the estate management's permission.

The provision of accommodation is a pretty standard part of employment contracts in China. This stems back to past regulations that restricted the places in which foreigners could live. While these restrictions have largely been lifted in cities such as Shanghai, schools in rural areas may still insist that teachers live only at the provided accommodation. Often this accommodation is located within the school grounds, but at times it may be located off campus. There are many upsides and downsides to school provided accommodation, however given that this accommodation is often compulsory, there seems little reason to complain about the accommodation provision. It would be wise to ask to see some photographs of the inside of the accommodation, an entry way view (stairway), and an outside view. These pictures will help to give you a better idea of what to expect.

#### Teacher Responsibilities - The Teacher shall:

1. Maintain a professional manner and appearance at work and attend classes on time.

2. Complete all necessary preparation for classes.
3. Notify the school if the Teacher cannot attend scheduled classes due.
4. Arrange time to make up all missed lessons. If missed lessons are not made up, the school will deduct an amount pro-rated against the Teacher's salary, for each missed lesson.
5. Abide by local law and state regulations, including that the Teacher shall not engage students in any religious or political activity in violation of the laws and regulations of the People's Republic of China.
6. Not administer corporal punishment to the students.
7. Not undertake other employment in China during the course of his/her employment with the School unless the prior permission of the School Director has been obtained.
8. The School has the right to make videos and take photos of the Teacher's teaching and during promotional activities.

The above clause is quite clear in its requirements and outlines the teachers responsibilities upfront in a clear and concise manner.

#### Sick Leave/Absence

1. If the Teacher is sick, he/she needs to inform immediately the School's Director that he/she will not be going to class.
2. The Teacher has to make up the hours that have been missed and the School will pay the salary in full after the Teacher makes up the hours.
3. For each case of absence without notice to the School Director, the School may deduct the Teacher's hourly pay as an absence without notice fine.
4. If the Teacher misses 3 days or more due to sickness, he/she will need to produce a note from a doctor. In the absence of a sick note from the doctor, the Teacher will be fined two times their salary for the days that they miss.
5. The school shall help to call for appropriate doctors for the Teacher, upon the request and agreement of the Teacher.
6. The school shall not be responsible for the cost of sickness repatriation.
7. Should the Teacher take days off for other reasons, the School will deduct twice the number of hours missed.

The above are all pretty standard terms. Although they are open to interpretation and therefore the possibility of dispute, the essence of these clauses is not at all unfair. The school has a right to protect itself against unexplained absences by the teacher, and provided that this right is exercised fairly there should be no problem.

One thing to watch out for would be clauses such as number seven above. Some schools will penalize teachers for time missed by fining the teacher double or even triple the hourly wage for the time missed. This is unreasonable and attempts should be made to negotiate this. If the reasoning is that a teacher who doesn't show up to work won't get paid and can therefore not earn money if they don't work then that is fine. But to suggest that a teacher should lose money for his or her inability to work on a certain day could well be abused by a school.

#### Medical Insurance and Sick Pay

1. The School will not provide minor medical care for the Teacher while the Teacher is employed at the

School, will not provide or pay for medical insurance, will not provide repatriation insurance for the Teacher. It is the Teacher's responsibility to arrange for such insurance.

2. The Teacher may take a maximum of 5 days paid sick leave per School year, subject to the Teacher's illness being verified by a doctor at the largest local hospital. Additional sick days beyond this limit will not be paid without obtaining the School Director's approval, which will not be unreasonably withheld.

This clause is a bit out of the ordinary in as much as the majority of legal positions offered in China include medical cover at a local level. Regardless of this, teachers are encouraged to organize medical travel insurance that includes medical evacuation in the case of an emergency. In this way most legal teachers would have two types of insurance - local medical cover provided by the school, and emergency and accident travel insurance offered by a firm back home.

#### Termination of Contract:

1. If the Teacher breaches the above terms and/or is negligent in his or her prescribed duties, the school may terminate the Teacher's employment immediately without compensation or payment of airfare and completion bonus (1000 Yuan RMB) to which the Teacher would otherwise have been entitled.

2. If the Teacher terminates his or her employment, he or she shall give 30 days notice in writing of the date of termination.

3. If the school breaches the terms of the agreement, the Teacher shall be entitled to leave immediately without penalty and the school shall pay the entire cost of the Teacher's return airfare and necessary overnight accommodation.

4. If the School terminates the Teacher's employment prior to completion of the contract for any reason not caused by the Teacher, the school shall give the Teacher 30 days written notice of the date of termination or pay the Teacher's return airfare.

5. Regardless of the reason of termination, the Teacher must vacate the provided housing within seven days of the date of termination, and the school shall settle any outstanding financial matters with the Teacher, prior to the Teacher's departure from China.

6. This agreement may be renewed and or updated under the same or renegotiated conditions for a specified period if all parties agree.

The terms of termination listed above are quite fair and it is good to see that the responsibilities and penalties for both parties are outlined clearly in the contract. Too many schools do not list the responsibilities that they have to the teacher, or list these in an ambiguous manner so as to make these clauses next to useless. The clause in this contract is very clear.

The Employer and the Employee hereby declare that they have read and understand clearly the above provisions and further agree to sign this contract and abide by such provisions. The signing parties shall retain a copy of this contract.

Employee

Employer/Representative

Date

Overall, this is one of the better employment contracts that we have seen offered to teachers in China.

### Contract C

1. Employer

1.1 Location: *[Admin - Full address given in contract deleted]*

1.2 Terms and Conditions

The school shall provide assistance and guidance where appropriate to ensure an enjoyable and a fruitful experience for the teacher/employee.

The school supplies its full contact details including street address on the contract which is a good sign.

## 2. Visa

2.1 The employee/teacher shall be responsible for having a fully 60 days tourist visa from the date of the contract have been affected, if not, the employee/teacher shall be responsible for all of the cost for requiring another tourism visa for the term of the employment.

2.2 After the employee/teacher begins to teach at the school, the employer/school shall be responsible for acquiring the working permit for the employee/teacher. The employer/school will be only responsible for the processing working permit; the school will share 50% of the cost of application for visa, and the employee/teacher will be responsible for the rest of the cost (it includes all of necessary cost for the required documents preparation).

2.3 It usually takes approximately 75 days for the employer/school to obtain the Working Permit for the employee/teacher. The employee/teacher is responsible for hand in all of required documents (original or copy of college diploma, pictures, resume, health checking form etc) to the employee/school (for working permit processing purpose) within two weeks after the contract has been signed; if not, the employee/teacher has to take all of the relative responsibility. If the employer/school is not able to get the working permit for the employee/teacher after 75 days, then the employer/school will be responsible for covering the round trip ticket cost for the employee/teacher to get another tourism visa in case is needed

2.4 If the employee/teacher fail to complete this yearly contract, employee/teacher will have to cover the cost of all application for his/her own working permit. It will be deducted from deposit.

This contract clearly indicates that the foreign teacher is expected to arrive in country and commence work on a tourist visa. This would technically be illegal, but there are some advantages to the foreign teacher in doing things this way, as opposed to committing to a Z visa before arrival. Having said that, working legally is clearly in the best interests of the foreign teacher. This is discussed at some length on other parts of this site.

The clause above that pertains to the fact that the employer will cover the cost of a visa run should one be required while waiting for the Z visa to come through is clearly in the employees favor. As is the clause that entitles the employee to the return air ticket money should a Z visa not be made available to that teacher.

## 3. Salary, bonus and benefits

3.1 The employer/school sponsored the employee/teacher must maintain a total monthly salary of 5000 RMB per month excluding deductions and absences without pay. The teaching hour is maximum 26 hours per week. Payday will be the 5th of every month.

3.2 The salary for first working month: the employee/teacher will be paid by the numbers of her/his actual working days.

3.3 There will be a bonus, \$ 1000 RMB, awarded to the employee/teacher at the completion of 1-year contract.

3.4 Teacher will have benefits as follow:

Housing: accommodation will be provided free of charge by the employer/school. We will be giving 800 RMB per month for the compensation of accommodation when the school fail to provide housing for the employee/teacher.

Air fare: round-trip air fare paid by employer/school at the completion of 1-year contract, and the school reserved the right of booking round trip ticket (not more than \$ 6000 RMB).

Salary, bonuses, and benefits as listed above seem inline with the industry standard.

## 4. Employee's work responsibilities

4.1 The employee/teacher has to arrive to school 30 min before class start according the class schedule issued, for outside teaching, 60 min before class start is required. The employee will be responsible for class preparation, and complete the teaching log in or outside the school.

4.2 The employee/teacher will be responsible for the class preparation on daily base; the employee/teacher will be asked to devise his/her own lesson plan and hand in to the employer/school a week before the class start. The employee/teacher will be responsible for correcting the students' work, and designing relative handouts for the classes.

4.3 The employer/school shall provide the form of lesson plan, teaching log, and the book for the employee/teacher.

4.4 Break time: depends on the employer/school's schedule, there is 5 to 10 minutes break time between the classes. The employee/teacher shall go back class on time.

4.5 During the contract period, the employee/teacher is required to attend in special promotional events for the employer/school (i.e.: a Xmas party, teaching demo, field trip etc). This may fall outside regular teaching hours, the teacher has to co-operate with the employer/school within promotional events

4.6 The employee/teacher shall attend meeting, orientation and training sessions as and when required by the employer/school. The employee/teacher will be required to attend all training class or course with the given time.

4.7 The employee/teacher shall assist school to do some administration work, such as: telephone testing, field trip, school promotion, learning presentation, and parents meeting etc.

4.8 The employee/teacher shall be responsible for his/her own meal during the school time.

The clauses above indicate that there are a lot of outside of teaching responsibilities upon the teacher. Any applicant considering this contract would be well advised to determine a maximum outside of class workload, and negotiate an overtime rate payable for hours in excess of this agreed upon maximum. It is also advisable that the teacher gets this limit in writing from the school, preferably by way of an attachment to the contract.

#### 5. Responsibilities of the employee

5.1 The employee/teacher shall follow to all policies, rules, and regulations of the employer/school. And, the employee shall establish harmonious relationships with others in the school and outside of the school.

5.2 Once the employee/teacher breaks the contract, or leaves his/her teaching position in the contract duration without the permission of the employer/school, the employer/school shall reserve the right to take legal action and report to the local authorities.

5.3 The employee/teacher shall verify all start and finish time by using a time card. The employee/teacher shall arrive to the school and start to work on time; late and early leave without the permission are not permitted, if so, the employer/teacher shall be punished according to the relative rules.

5.4 Regulations for leave of absence: for leave of absence, the employee/ teacher shall give the employer/school 5 days advance notification, and it shall be approved by the employer/school. If the employee/teacher had sick leave for more than three days, the doctor note must be shown to the employer/school; if the employee/teacher had sick leave for more than a month, then his/her employment status will be automatically determined as on leave without pay. For private leave and sick leave: The employee/teacher shall submit application for leave of absence, defined as an absence without pay to the employer/school.

5.5 A leave of absence without the employer/school's permission shall consider as neglect duties; 1/10 of the monthly salary shall be deducted from the employee/teacher's monthly salary for neglect duties.

5.6 The employee/teacher shall find a substitute teacher to cover his/her position for a leave of absence for special reasons, i.e. family emergency etc. In the absence duration, the employee/teacher's daily salary will be paid to the substitute teacher.

5.7 In the event that the employee/teacher wishes to resign prior to completion of the contract, a formal resignation letter shall be submitted to the employer/school no less than 60 days before the employee's last day of the work, which should be specified. If the notification is less than 60 days in advance, then the employee/teacher shall be fined one monthly salary and no bonuses shall be paid. For this reason the school will save 1000 RMB every month for as long as three months as a refundable deposit, once the employee/teacher complete the contract, the deposit will be return in total without interest.

5.8 The employee/teacher shall be dressed and groomed in a professional manner; sandals, vests, shorts, and jeans with holes are not acceptable.

5.9 Both parties, the employee/teacher and the employer/school, are required to declare his/her wish for contract re-newel at least 45 days before the end of the contract.

5.10 If the employee/teacher violates any of the articles/rules in the contract, the employer/school may issue two verbal warnings; and if there is no improvement after two verbal warnings, a written warning will be given, the employee/teacher then shall pay fine of 150 RMB per article, for rule breaking. The employer/school may suspend/dismiss the employee/teacher after two written warnings.

5.11 Due to the copyright, teaching materials shall not be used outside the place of employment without the permission of the employer/school.

5.12 After the contract been signed/affected, the full time employee/teacher shall not be allowed to work for the third party; otherwise, the employee/teacher shall pay a fine, one month's salary, to the employer/school, and the employer/school shall dismiss the employer/teacher.

The first thing that becomes obvious when looking at this clause is the fact that this employer levies a lot of fines upon teachers who don't comply with the contract.

Clauses 5.1 through to 5.4 are all pretty standard clauses.

The penalty amount stated in 5.5 is somewhat unreasonable and should more fairly be in proportion to the amount of time missed by the teacher. It would seem that a penalty of 1/(days worked per month), or possibly double this amount would be a much fairer amount to pay. One tenth of the monthly salary is far too high a penalty to pay for missed time.

Clause 5.7 is pretty standard but is so general that it leaves the possibility open that the school may levy the penalty should the notice period given be less than 60 days. Such a clause may appear more reasonable and thereby more workable if the penalty for premature breach was reduced according to the length of notice given i.e. a teacher who gives 59 days notice may be entitled to all or a large portion of the deposit back, whereas teachers who leave without notice run the risk of forfeiting all of their deposit money.

Clauses 5.8 to 5.11 are also pretty standard in nature.

Clause 5.12 is a reasonable clause if the primary employer has provided the foreign employee with the accommodation, number of teaching hours, and wages, required by that teacher to make a reasonable living. Should the wages or hours of work be inadequate for that teacher to make a reasonable living then such a clause may prove to be too restrictive.

## 6. Health Insurance

6.1 Before and during the Health Insurance processing period, the employee/teacher shall have his/her own health insurance.

6.2 The employer/school shall assist the employee/teacher in obtaining Health Insurance after the employee/teacher has his/her working permit, 60 RMB per month will be paid by school.

Teachers are encouraged to secure their own health insurance inclusive of accident and emergency evacuation insurance, regardless of any health care the school may offer. Generally speaking the level of health care offered by schools is pretty basic.

## 7. Income Tax

Employee/teacher must obey the Chinese tax laws.

A reasonable clause, and it is reassuring that such a clause is included in this contract.

## 8. Teacher's Miscellaneous Responsibilities:

8.1 The employee/teacher shall be responsible for all his/her legal and financial obligations. The employee/teacher shall be responsible for his own insurances, i.e. travel insurance, life insurance, injury insurance etc.

8.2 The teacher might experience cultural shock and unbearable weather conditions. The school will provide assistance and guidance whenever appropriate. It is in the teacher's best interest to respect Chinese customs and observe China laws.

8.3 Suggestions / comments / regarding the management's policies / curriculum /administration, etc. is most welcome and appreciated. However, depending on the circumstances, these might or might not be accepted for implementation for various reasons. The teacher should commit to follow the school's policies and the principal's guidance, and strive to establish harmonious relationships within and without the school during the contract period.

Very reasonable clauses that indicate an understanding of the problems that foreign teachers may face in their decision to teach and live in China.

## 9. Amendments

This agreement can be amended if both the school and the employee agree upon new terms.

This final clause is a standard clause.

Finally, legal teaching jobs in China will most likely be using an employment contract drafted by SAFEA. To view an example of this contract please click [here](#).

*Please note that the information presented above does not constitute legal advice. It is merely the opinion expressed by the author of the information and is intended as a guide only. Users are advised to seek professional legal advice for matters as they see fit.*