

Can foreign employee be protected by Chinese labour law?

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Can I be protected under Chinese labour law as a foreigner employee? With more foreigners working in China, disputes involving foreign employees have gone up. Can these disputes be governed by Chinese labour laws and regulations?

Firstly, according to the “Regulations on the Administration of Employment of Foreigners in China”, a foreigner must have a work permit and a residence permit to work legally. Without these permits, providing labour in China is illegal and can result in penalties for both the company and the foreign employee.

Secondly, even with these permits, you might still not be protected by Chinese Labour law. You must establish an employment relationship in China.

If you have a contract with a Chinese company, then you’re covered. You can take the matter to court and be protected by Chinese Labour law.

However, many foreigners’ contracts are with their office outside China. These contracts usually state they’ll be governed by home laws. Are they still protected under Chinese Labour Law? Maybe.

In recent decades, the Supreme Court has developed tests to see if a foreigner has established an employment relationship in China:

The “economic reality” test:

The court might ask who paid wages or a salary (by an entity in or outside china)? Does the foreign individual pay income tax in China? And so on. If yes, then it is more likely that there is a true employment relationship in China.

The “control test”:

Who decides what, how, when, and where work is done? If it’s the company in China, it suggests an employment relationship in China.

The courts consider these details and other factors. The more tests passed, the more likely there’s an employment relationship.

Although courts use multiple tests, it’s clear that without a work permit or residence permit, foreign aren’t protected by Chinese labour law.

In practice, labour disputes among foreigners are complex, and each case is decided individually.

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