

Companies Targeted for Illegally Hiring Foreign Interns

by Maarten Roos, Robin Tabbers and Zhu Ye

In recent weeks, several of our clients in Shanghai were raided by the local Public Security Bureau ("PSB", China's police). The PSB was looking for evidence of these companies hiring foreigners or foreign interns without the proper papers.

Chinese laws establish that foreigners can only work in China if they obtain a proper employment permit and work visa. Many young applicants do not meet the minimum standards for being employed in China, and therefore are encouraged to enter on short-term business or even tourist visas. This exposes them, and the employer, to risk.

Conditions for Foreign Interns in China

Moreover, if foreigners come to China for a shorter period (up to six months) to complete an internship then they must enter on a special business (F) visa for interns. However, the procedures for obtaining such an internship visa are relatively complicated, and one strict condition is that the intern cannot receive any kind of payment; even indirect allowances or reimbursement of expenses may be identified as remuneration by the PSB and therefore subject to administrative punishment. This conflicts with some bilateral treaties that China has signed with several developed countries which provides income tax benefit to qualified interns, but the position generally held by the PSB is that such intern-salary-friendly treaty clauses have not been locally legalized in China, and therefore no interns should be paid.

Penalties under the New Exit & Entry Law

The timing of the recent raids may relate to the PRC Law on the Administration of the Exit and Entry of Foreigners, which

has passed last year and will become effective on 1 July 2013. This law establishes higher penalties in case of foreigners working in China illegally:

- foreign employees can be penalized between CNY 5,000 and CNY 20,000; additionally, he (she) can also be detained for 5 to 15 days, and can be deported.
- Chinese employers (including foreign-invested companies) who illegally hires foreigners can be fined at CNY 10,000 per person, with a cap of CNY 100,000. In addition, any income resulting from such employment can be confiscated.

In addition, the new law re-confirms the PSB's right to on-site inspections and continuous inspections of suspects, and where a suspicion of illegal employed cannot be clarified, then the suspect can be temporarily detained.

Suggestions on Minimizing Risks

Companies that decide to hire foreigners or foreign interns are strongly advised to follow the law, arrange for proper visa and permits, and avoiding paying salaries where this is not permitted (i.e. in the case of interns). In addition, to avoid that police raids will disrupt business, companies should instruct personnel on how to respond to such a raid. For example, the legal basis for the raid and the ID cards of the officers should be confirmed first; and the company should carefully organize how to assist the officers in their search, and what information to provide them to support their investigation.

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