Room 1601 Golden Square
268 Jiangning Rd. Jing'an Shanghai China
上海市静安区江宁路268号嘉禾中心1601室
Post Code邮编：200041
Phone电话：021-64179501 Fax传真：021-54110106

Can foreign employee be protected by Chinese labour law?

Author： Petra Chen

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 a 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 a 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.

Shanghai Office
+86 02164179501
linkking@linkking.cn
Unit 1601, Golden Square, No. 268 Jiangning Road, Jing`an District, Shanghai

San Francisco Office
+1 9255575968
sf@linkking.cn
4 Anthurium Ct, Danville, California, United States

Tokyo Office
+81 07041754118
tyo@linkking.cn
1 Chome-6-1-302, Hirakawachō, Chiyoda City, Tokyo