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New Exit-Entry Administration Law Commands Closer HR Monitor

The new Chinese Exit-Entry Administration Law (the “Law”) was passed by the National People’s Congress on June 30 this year, which will take effect from July 1 next year. One of the ‘highlights’ of the new law is to increase the extent of punishment on illegal entry, residence and working in China by foreigners. Also, penalties may be imposed onto employers. It is in HR management’s interest to keep a close monitor on the development of the subject, thereby to ensure proper communication and compliance in the future.

Introduction

The Law encompasses both Chinese nationals as well as foreigners visiting or residing in China. It has consolidated and improved on the old Exit-Entry Administration Law for Foreigners (enacted in 1985) and its implementation rules as well as the relevant laws applicable to Chinese nationals. In the Law, coverage on foreigners is much more than on Chinese nationals.

Enhanced Penalties

Foreigners visiting, residing or working in China illegally will face enhanced penalties. In order to deal with these three types of illegal cases, different measures will be adopted by the Chinese government under the Law, including:

- Setting clearly the definition of illegal employment, and regulating by requiring proper residence and work permits;
- Strictly controlling visa issuance and holding the inviting units responsible for the truthfulness of the invitation letters for visa application;
- Enhancing management of foreigners residing in China by regulating document processing, verification as well as boarding registration; Citizens have obligation to report illegal cases;

- Providing the authorities with the right of imposing fines, interrogation, detention, setting dates for departure, and even deportation with denial for re-entry for up to five years;
- Increase monetary fines and even detention for those breaching the Law. Employers of such foreigners will also have to face increased fines as well as confiscation of the relevant business income.

Obviously, HR management has a more pressing need to ensure proper compliance of such rules by their foreign employees in order not to affect smooth business operations.

Special Talent Introduction

There is a new type of visa under the 'Ordinary Visa' category that can be applied for for the introduction of 'special talents' into China. The detailed definition of 'special talents' is not stated in the Law, for the obvious reason that such definition will be subsequently formulated and provided by the State Council in accordance with the national policies and directions. HR management may take advantage of this type of visa application as very often there may be incentives provided by the central and local government on such introduction of special talents.

Shared Information Platform

Currently the Chinese exit-entry information systems are established by the Public Security Bureau and other ministries and departments separately. The future development direction is said to be towards a unified exit-entry management information platform to be shared by various ministries and departments in China.

With exit-entry information readily available, some may speculate that it will inevitably allow stricter and broader implementation and administration of some of the Chinese laws, eg the levying of personal income tax in China.

Action

With more serious implications of exit-entry rules of the country, HR management should ensure proper compliance by their employees. Traditionally, before implementing a new set or more stringent rules, the Chinese government has always been more lenient before the new rule implementation for the purpose of smoother transitioning, especially for self reported cases. A review exercise by HR may be necessary so that potential discrepancies can be rectified before the introduction of the Law.

It should be noted that it is also in the best interests of the foreigners entering, residing or working in China to ensure that the Chinese requirements are duly satisfied, because non-compliance may potentially affect their other rights and activities in China eg purchasing or disposing of real estate properties or vehicles in China under their own

names, or even properly discharging their tax liabilities in China.

Although the new law is yet to take effect, since it is expected that more detailed implementation measures will be introduced, HR management should keep close monitor of the development of the subject.

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