



GES NewsFlash

People's Republic of China — China Adopts New Exit and Entry Law

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Summary

On June 30, 2012, the National People's Congress enacted a new law on exit and entry control.

Key implications

Effective from July 1, 2013, the new exit and entry law will more closely regulate foreigners entering, living, and working in China.

Illegal employment: Any party engaging in illegal employment, including employers, employees, or agents may face punishment for violations.

Employees can be fined 5,000 RMB to a maximum of 20,000 RMB. For serious violations, employees can be detained for five to 15 days in addition to paying fines mentioned above.

Individuals/agencies illegally helping with job placement for foreigners will be fined up to a maximum of 100,000 RMB. Any financial gain resulting from such employment can potentially be confiscated from individuals/agencies, employers, and employees.

Employers may also be fined separately 10,000 RMB for every foreigner illegally employed, up to a maximum of 100,000 RMB. Any financial gain resulting from such employment will also be confiscated from both the employees and employers.

Illegal stay: Foreigners who are illegally staying in China but not working in China may be fined up to 10,000 RMB and/or be detained for five to 15 days.

Residence Permits: Foreigners who come to China to work must apply for a residence permit if the residence period exceeds 90 days. Previously, the requirement was 180 days. The validity of a residence permit for work purposes can range from 90 days to five years. Nonwork-related residence permits (i.e., for study purposes) can be valid for a minimum of 180 days to a maximum of five years. If the residence permit expires, the violator will be fined 500 RMB per day with a maximum of 10,000 RMB, and/or be detained between five days to 15 days, and will be forced to leave China. If a guardian of a child under 16 fails to fulfill the fiduciary responsibility regarding compliance with Chinese immigration visa regulations, he/she will be warned and fined less than 1,000 RMB.

Illegal exit and entry: Entering the border with a fake or altered certificate; using other people's traveling documents, evading inspection of the board control agency, and other illegal entry will be subject to fines between 1,000 to 5,000 RMB; for serious violations, the violator can be fined between 2,000 to 10,000 RMB and/or be detained from five to 10 days.

Talent visa: The law also introduces a new category of "talent visa," designed to attract more foreign professionals. Detailed regulations on this issue will be published at a later date.

Permanent residence: The law for the first time allows permanent residence to be granted to foreigners who make "outstanding contributions" to China, or "otherwise meet the requirements" for permanent residence as set by agency regulations. However, targets or quotas regarding the number of permanent residencies to be granted have not been established in the new law; the law is vague on the details on qualification and implementation. The law states that detailed regulations on this issue will be published at a later date.

Biometric data: Foreigners applying for residence certificates should provide their fingerprints and "other biometric data" to the Public Security Bureau (PSB). Moreover, the PSB and Ministry of Foreign Affairs may promulgate regulations to collect such biometric data from persons exiting and entering the country. However, implementation rules on registering biometric data are not yet available.

Deportation: If a foreigner is deported from China for immigration/visa violations or violation of other Chinese law, he/she will not be allowed to re-enter China for five years from the date of deportation. It is possible for a foreigner to be deported not only for immigration/visa violations but also for criminal or other "illegal" activities. The law does not provide specific details or definitions on activities that could lead to deportation.

Voluntary departure and deportation: Foreigners who violate China's laws and regulations and deemed "unsuitable" to stay in China will be given an exit deadline to depart voluntarily. Foreigners who commit "severe violations" that do not constitute crimes may be deported and not allowed to enter the country again for 10 years. Again, the law does not define violations that could result in deportations and may be subject to local interpretation by the relevant public security bureau.

Miscellaneous: Foreign nationals staying in China should always carry their own passports or residence permits for possible check by PSB. Foreign babies born in China should be registered at the local PSB within 60 days after birth; otherwise, they can be fined up to 2,000 RMB. Employers employing foreigners should report employment information to the relevant local government departments for internships. Moreover, if foreign students are employed in China, they must apply for work permits and residence permits instead of holding student visas to work and stay in China.

Deloitte's view

The Chinese government is now more concerned with illegal employment and unlawful residence of non-PRC nationals. The above new immigration and visa law is intended to encourage compliance with Chinese immigration rules. The new law stipulates harsher punishments for illegal entry, stay, or employment of foreigners. Both employers and foreigner employees engaging in illegal employment or unlawful residence will be subject to monetary penalties. Employees in addition, may also be subject to imprisonment.

With issuance of the new law, more immigration audits by PSB with stricter enforcement are expected.

We highly recommend every employer pay closer attention to the new law and determine if their foreign employees, family members, and business travelers hold valid visa/accommodation certificates to work and stay lawfully in China.

If there are any other questions, please feel free to contact your immigration specialist.

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