China Employee Termination Checklist for Employers

A step-by-step checklist for HR teams and overseas managers: choose the right legal ground, build the evidence, follow procedure and calculate severance before you act.

1. 1. Choose the right legal route

[ ] China has no at-will employment. Every unilateral termination must fit a ground in the Labor Contract Law (LCL).
[ ] Mutual termination (LCL Art. 36) is the lowest-risk route in most cases. Severance is due if the employer proposed it.
[ ] Termination for cause (Art. 39): serious breach of properly adopted rules, serious dereliction causing major damage, criminal liability, etc. No severance.
[ ] No-fault termination (Art. 40): illness, proven incompetence after training or reassignment, or major change in circumstances. N+1, or N with 30 days' notice.
[ ] Economic layoff (Art. 41): 20+ employees, or fewer than 20 but 10% or more of the workforce. Requires a specific statutory procedure.
[ ] Expiry of a fixed-term contract: severance is still due unless the employer offered renewal on the same or better terms and the employee refused.

2. 2. Check for protected employees

[ ] Art. 42: no Art. 40 or Art. 41 termination for pregnant, maternity-leave or nursing employees.
[ ] Also protected: employees within the prescribed medical treatment period for illness or non-work injury.
[ ] Also protected: employees with a work injury or occupational disease who have lost all or part of their capacity to work.
[ ] Also protected: employees exposed to occupational hazards who have not had an exit health examination, or are under diagnosis.
[ ] Also protected: employees with 15+ years of continuous service who are within 5 years of statutory retirement age.
[ ] Protected employees can still be dismissed for genuine serious misconduct under Art. 39 - but expect close scrutiny.

3. 3. Build the evidence file before acting

[ ] Signed labor contract and job description, with any amendments.
[ ] Employee handbook adopted through democratic procedure (LCL Art. 4), plus the employee's signed acknowledgment of receipt.
[ ] The specific rule breached and proof that it classifies the conduct as serious misconduct.
[ ] Objective evidence of the conduct: attendance data, emails, CCTV, written statements, system logs - dated and preserved.
[ ] For incompetence: clear targets, documented failure, training or reassignment, and documented failure again afterwards.

[ ] Employee's written explanation or record of the disciplinary interview, signed where possible.

4. 4. Follow the procedure

[ ] Notify the trade union (or employee representatives where there is no union) of the reasons before unilateral termination.
[ ] Serve a written termination notice stating the legal ground and the facts relied on. Avoid vague wording.
[ ] Deliver the notice in a provable way: signed receipt, courier to the contract address, or email/WeChat if agreed in the contract.
[ ] For Art. 40 terminations, give 30 days' written notice or pay one month's wage in lieu.
[ ] For Art. 41 layoffs: explain the situation to the union or all staff 30 days in advance, hear their views and report the plan to the labor authority.
[ ] Act promptly after discovering misconduct. Long delays weaken a serious misconduct case.

5. 5. Calculate severance correctly

[ ] N = one month's wage for each full year of service. Six months or more counts as one year; under six months counts as half a month.
[ ] Wage base = average monthly wage over the last 12 months, including bonuses and allowances paid.
[ ] High earners: if the wage exceeds 3x the local average monthly wage, the base is capped at 3x and years are capped at 12.
[ ] N+1: add one month's wage in lieu of notice for Art. 40 terminations without 30 days' notice.
[ ] 2N: compensation for unlawful termination under LCL Art. 87 if the employee does not seek reinstatement.
[ ] Also settle: unused annual leave, prorated bonus if the plan provides for it, overtime and any outstanding wages.

6. 6. Mutual termination agreements

[ ] State that the employer proposed or the employee proposed the termination - it affects whether severance is due.
[ ] List every payment separately: severance, notice pay, leave, bonus, other compensation.
[ ] Include a clear full and final settlement clause covering all employment-related claims.
[ ] Set the last working day, handover duties and return of company property.
[ ] Address confidentiality and, if relevant, whether any non-compete is released or enforced.
[ ] Have the agreement signed in Chinese (bilingual is fine) and give the employee a copy.

7. 7. Exit paperwork

[ ] Issue a termination certificate at the time of termination (LCL Art. 50).
[ ] Complete social insurance and housing fund transfer procedures within 15 days.
[ ] Pay final wages and severance on time. Severance is payable on completion of the handover.
[ ] Keep the labor contract and termination records for at least two years.
[ ] For foreign employees: cancel the work permit and notify the entry-exit authority as

required.

[ ] Remember the limitation period: the employee generally has one year to file for labor arbitration.

General information only, not legal advice. Laws and local figures change - confirm current rules.
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