Employment with a representative office in China

Description

Frequently I was inquired by people working in a representative office (hereinafter “Rep Office”) of a foreign Company about labor & employment issues. Recently I have also represented a foreigner, a representative in a Rep Office of a foreign architecture firm, in a labor dispute. I feel it necessary to clarify some of the rules regarding employment with a Rep Office as these rules are somehow different from employment with other foreign invested enterprises.
A Rep Office under Chinese laws shall have one chief representative and may have up to three general representatives and other staff. The representatives, chief or general, are to be appointed by the foreign parent company upon registering the Rep Office with Chinese authorities. Then, such foreign representatives will apply for the work permit and residence permit in order to to legally work and live in China. In Shanghai, a representative does not need to have a labor contract in order to obtain the work permit. Now after all legal formalities are effected, can we say that the labor relationship is established between the representative and the Rep Office? The labor relationship discussed here refers to the legal relationship between the employees and employers that are governed by China Labor Contract Law, where employees may claim double salaries, economic compensation and other labor benefits in certain circumstances provided in the Labor Contract Law. According to the Interim Provisions regarding Administration of Representative Offices of Foreign Enterprises (the â€œInterim Provisionsâ€•), a Rep Office shall only hire its workers via a third party agency, generally, a local institution responsible for foreign affairs. Literally, this provision is interpreted that a Rep Office on its own does not have the right to directly hire any workers. Some of the local governments like Beijing and Shanghai provide clearly in their implementation rules for the Interim Provisions that a Rep Office shall not directly employ any Chinese workers, making it appear that a Rep Office may directly hire foreign workers.
In judicial practice, rules have come clear in regard of employment with a Rep Office.
In the case of chief representative and the general representatives, as mentioned above, these people are appointed by the foreign parent company, and a Rep Office may directly hire those people as provided by related rules. Now the question is whether their relationship is the labor relationship under China Labor Contract Law. If these representatives are unfairly dismissed, do they have the right to sue the Rep Office for damages equal to two times the economic compensation? The answer is NO. There are no clear statutory laws in this regard. In reality, there have been precedent cases ruling that the relationship between a directly hired

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