

Classification of Employees Conducts in China's Workplaces

Enactment of the Labor Contract Law of the People's Republic of China (hereinafter "**Labor Contract Law**") has very much changed the landscape of employer and employee relationships in Chinese workplaces. One of the most strongly felt pains is the inability for employers to dismiss unwanted employees as the Labor Contract Law has substantially restricted the circumstances¹ in which an employer can legally fire their employees.

The only leeway for employers to fire employees in the normal course of businesses resides with the provision in Section 39 of the Labor Contract Law that an employer can legally terminate an employee's labor contract if the employee is in serious violation of the rules and bylaws of the employer. Little wonder that more and more Chinese companies are realizing the importance of drawing up their own employee handbook which always leaves a large portion for prescribing rules and standards of the conducts of employees, breach of which may lead to termination of the labor contract of the breaching employee.

However, my experience in revising and improving the employment handbooks of clients shows that there is little efforts that has been made to sort out and classify or categorize the conducts of employees in the workplaces as most handbooks simply set out a long list of conducts that are prohibited with certain sanctions and penalties attached thereto. The lengthy and often confusing list can cause otherwise avoidable problems in HR management. This article aims to clean up the mess and sort out and classify the workplace conducts that will cover all and every aspect in corporate business operation and apply to all employees, senior or junior, in a company.

In essence, an employee handbook should be deemed as extension of the labor contract relationship between the employee and employer and therefore the general analysis of legal relationship in terms of rights and obligations shall apply in this context. For purpose of this article, we pivot our analysis on what types of obligations that are owed by employees to employers and that should be imposed by employers on employees and with that done, we will be able to classify and categorize the conducts of employees pursuant to these obligations.

Based on my observation, employee conducts can be classified into five categories as follows.

¹ See Section 39, 40 and 41 of the Labor Contract Law.

I. Duty of Loyalty

An employee of a company is and should be regarded as a positive element that promotes and helps to achieve the business objectives of the company. An employee is generally entrusted, more or less, with certain kind of corporate assets, or management etc.. Duty of loyalty should be the first attribute an employer would like to expect from their employees. A betrayal of this duty of loyalty can be disastrous to any company.

However it shall be noted that duty of loyalty is a statutory obligation imposed by China Company Law on senior corporate officers. For ordinary employees, they are not subject to such statutory duty but this does not mean employers cannot expect their employees to be loyal to them.

Duty of loyalty encompasses conducts such as disclosure of conflict of interests, proper keeping and use of corporate assets and equipments, confidentiality, prohibition of embezzlements and fund-misappropriation and the like.

II. Duty of Diligence

Duty of diligence is another basic expectation by employers from their employees, requiring employees to be careful, attentive, executive, proactive, creative in performing their job.

So the duty of diligence will generally cover timely office attendance, prompt execution of orders from superiors, self-motivating, compliance with work rules and procedures and the like. From the negative perspective, diligence will prohibit employees from chitchatting online or in office, absence from or unreasonable delay in work, engagement of non-work related activities during working hours, any kind of dereliction of job duties etc.

III. Duty of Honesty and Good Faith

Duty of honesty and credibility refers to personal attribute of the employees in respect of job application, job performance and obtaining of benefits from employers.

First of all, when applying for a job opportunity, the employees shall provide true and valid information and documents to prove its capability such as education diploma, track records, affidavits etc. It is quite a common phenomenon in China for a job applicant to use false information and fake certificates in applying for a new job. In the course of job performance, this duty requires employees to have down-to-earth attitude and do not make unrealistic promises and offers.

IV. Duty of Refinedness and Friendliness

This duty of civility and friendliness is to regulate and govern the inter-personal relationship between employees of the company. Good and amicable working environment and atmosphere can be conducive to productivity of a company. Companies should formulate rules that cultivate civility and amicability among staff, senior or junior.

For example, employees shall not use bad language in office and shall not give

nicknames to colleagues, and shall not be engaged in sexual harassment in any way in work place.

This duty shall also extend to the relationship between employees and corporate clients and customers.

V. Duty of Civility and Compliance

This duty is imposed to regulate and govern employees' conducts as a member of a group or organization. In any organization, any individual of that organization is expected to behave in a way that keeps the organization in harmony, order and good operational conditions. This does not specifically refer to the dealing or interaction of employees with other elements of the organization such as machines, money, colleagues or clients, but with his or her surroundings in the work place.

This duty encompasses conducts of compliance with rules stepped up by company to maintain public order, restraint from making trouble or chaos in office or other work places. Another very important and regular section of employee conducts is related to employee dressing code, which shall fall within the ambit of this duty.

Conclusion

The above categorization is not flawless, much subject to open discussion and further improvement. On the other hand, the merits of such categorization are obvious. HR management can more easily manage the behaviors of employees by accurately qualifying the same as one of those conducts categorized hereunder. Furthermore, this categories will serve a better guidelines for employees to improve and refine their conducts.

If you have any question or comment on the topic, please contact us:

Jason Tian

Beijing Dacheng Law Firm, Shanghai Office

24F, Shanghai World Financial Center, No. 100, Century Avenue, Pudong, Shanghai, China

Tel: +8621-20283433

Mob: +86-13816548421

Fax: +8621-20283853

jie.tian@dachenglaw.com or jasontian78@gmail.com