



Labor Law

New Regulation concerning Employment Issues of Foreign Nationals in China

The National People's Congress Standing Committee on June 30, 2012 approved the Exit and Entry Administration Law, which is the first comprehensive law concerning the entry, stay, and employment of foreign nationals in China. The law also includes rules regarding the entry and exit of PRC nationals.

The law will take effect on July 1, 2013. Supporting regulations are expected to be issued before the law becomes effective.

The key points of the law relating to the employment of foreign nationals are:

- Foreign nationals may legally work in China only if they have obtained both work authorization (i.e., work permits or expert certificates) and resident permits.
- The Ministry of Human Resources and Social Security and the State Administration of Foreign Expert Affairs are in charge of drafting catalogs listing the positions available for the employment of foreign nationals.
- Maximum fines on employers that illegally employ foreign nationals are increased from RMB 50,000 to RMB 100,000.
- Maximum fines on foreigners who are illegally employed are increased from RMB 1,000 to RMB 20,000. In "serious circumstances",

foreign nationals who are illegally employed may be detained for 5-15 days.

- Foreign nationals who are illegally employed may be deported and barred from entering China for up to ten years.
- A "talent" visa will be created. This visa will likely cover certain types of skilled employees and grants them immigration preferences. Further regulations governing this type of visa are expected to be issued soon.
- Rules governing the employment of foreign nationals who are registered students in China will be issued by the Ministry of Education. Students who breach these rules would be deemed to be illegally employed.
- Foreign nationals will be fingerprinted by public security bureaus when they apply for resident permits.
- PRC nationals, legal persons, or other organizations that become aware of foreign nationals who are illegally employed must timely file reports with the public security bureau.

According to section 41 of the Exit and Entry Administration Law, "the State Council shall provide the administrative measures concerning issues of employment of foreign nationals in China. Therefore, we will closely follow up the trend of such legislation and timely update you any available information."

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劳动法热点问题

外国人在中国就业相关问题新规定

2012 年 6 月 30 日，第十一届全国人大常委会第二十七次会议审议通过了《中华人民共和国出境入境管理法》（下称“**出境入境管理法**”）。该法是首部全面调整外国人在中国入境、居留、就业相关问题的综合性法律。此外，出境入境管理法还纳入了有关中国公民出境入境管理的相关规定。

该出境入境管理法将于 2013 年 7 月 1 日起生效，相关配套规定预计将于该法生效前制定并发布。该法中与外国人就业有关的要点如下：

- 外国人只有在取得工作许可（就业证或外国专家证）和工作类居留证件后方可在中国合法就业。
- 人力资源社会保障主管部门、外国专家主管部门将会同国务院有关部门制定外国人在中国境内工作的指导目录。
- 非法聘用外国人的用人单位可能面临的最高罚款额将从人民币 5 万元提高至人民币 10 万元。

- 在华非法就业的外国人可能面临的最高罚款额将从人民币 1000 元提高至人民币 2 万元。情节严重的，外国人还将面临 5 至 15 天的拘留。
- 在华非法就业的外国人可能被遣送出境，并可能至长自遣送出境之日起十年内不准入境。
- 本法新增“人才引进”类签证。这类签证将可能适用于拥有特殊技能的员工并为他们入境居留等提供便利。有关该种签证的进一步规定预计将于晚些时候颁布。
- 国务院教育主管部门将会同有关部门建立外国留学生勤工助学管理制度。外国留学生违反相关规定从事勤工助学工作的，属于非法就业。
- 申请办理居留证件时，外国人应当留存指纹等人体生物识别信息。
- 发现外国人有非法入境、非法居留、非法就业情形的公民、法人或者其他组织，应当及时向所在地公安机关报告。

根据《出境入境管理法》第 41 条，“外国人在中国境内工作管理办法由国务院规定”，我们将密切注视该法规的立法动向，及时提供相关信息。

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