

# Impact on Expats and their Employers of China's Updated Visa Laws – Now In Effect

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China has begun to implement its revamped visa laws, introducing an expanded range of visa categories but also ushering in new visa restrictions and more severe penalties for illegal employment and those breaching visa conditions.

China's Exit-Entry Administration Law ("Exit-Entry Law") was approved by China's legislature last June. It came into effect, as intended, on July 1, 2013. On May 3, 2013, China's State Council issued draft implementing rules (the "Draft Rules") for the Exit-Entry Law. A one month public consultation period for the Draft Rules expired on June 3 and these are expected to come into force before the Fall of 2013.

The Exit-Entry Law and Draft Rules (collectively, the "New Law") replace separate national and local visa laws and rules for foreigners and Chinese citizens (the "Old Law"), which date back to 1985. With more than 600,000 expatriates now working in China for six months or more, the Chinese government decided to update its visa laws because the Old Law was unable to cope with the growing problem of expatriates breaching their visa conditions and other public security issues.

## New Visa Categories

The New Law introduces a revised system of visas. The new categories include:

- **Z1 visa** - multiple entry visa, replacing the old Z visa, issued to expatriate personnel working in China for more than 90 days
- **Z2 visa** - multiple entry visa issued to expats intending to work in China for less than 90 days
- **M visa** - new business visa, replacing the old F visa, issued for business and trade activities, but not work, in China
- **Q1 visa** - family and dependent visa, issued to family members of Chinese citizens (eg: Chinese returnees who have given up Chinese citizenship) or permanent residents but entitling the visa holder to work in China for less than 90 days

A new category of so-called "Talent Visas" (R1 and R2) has been created for high caliber professionals but details are still pending. In addition, the New Law splits student visas into two categories: X2 for academic programs lasting 180 days or less and X1 for programs extending beyond 180 days.

The F visa will now be reserved exclusively for visitors coming to China for scientific, cultural, sports and education-related exchanges.

China will continue to grant permanent residence to foreigners who make outstanding contributions to China or otherwise who meet local requirements but the Draft Rules do not specify eligibility criteria or implementation details.

The Draft Rules fail to address China's longstanding problem with internship visas. Most interns do not meet the minimum standards for being employed in China and under the Old Law, interns were normally issued a special F visa on the condition that they receive no payment of any kind, including reimbursement of expenses. The New Law's silence on visa arrangements for interns and students doing part-time work leaves employers guessing about the steps needed to take to ensure compliance.

## **Residence Permits**

In addition to having a valid PRC visa, expats are required to hold a valid residence permit if they remain in China for more than 180 days. The New Law distinguishes between residence in China for work-related and non-work-related purposes. Foreigners intending to live in China for work can obtain a residence permit valid for between 90 days to five years and residence permits for those not working in China will be valid for between 180 days to 5 years.

Foreigners found living in China illegally (ie: overstaying their visas or residence permit or engaging in activities inconsistent with their visas) will be subject to a warning but the New Law gives the authorities power to impose fines of up to RMB500 per day (capped at RMB10,000) and arrest and detain for 5-15 days.

The New Law requires all foreigners to provide fingerprints and other biometric data when applying for residence permits. This is the first time that foreigners have been subject to such requirements on a nationwide basis.

## **Illegal Employment & Tougher Penalties**

The New Law provides, for the first time, a clear definition for "illegal employment" of expatriates as any of the following:

- working without a valid PRC Z visa and residence permit;
- working beyond the scope stated in work permit (ie: moonlighting);
- working outside the region specified in the work permit, or for an employer other than the one that sponsored the work permit;
- foreign students in China engaging in part-time employment without an appropriate visa.

The Old Law provided few enforcement measures to stop foreigners from working illegally. In practice, only expats working in China for more than three months without a Z visa were liable to be fined and the amount was usually RMB1,000 or less although other fines (eg: for exceeding

conditions of stay) might also be added. Local enforcement rules governing detention and deportation were rarely invoked.

The New Law provides for tougher penalties starting with fines of between RMB5,000-20,000. Any expat found working illegally will be forced to stop immediately and in serious instances, employees risk being arrested and held in detention for five to 15 days and could also be ordered to leave China or formally deported. Deportation will trigger a 'blacklisting' order preventing the individual from re-entering China for 10 years. Employers providing illegally employment to expats are liable to be fined RMB10,000 for each illegal employee (subject to a cap of RMB100,000).

The Exit-Entry Law also gives the authorities powers to confiscate any income from employers that is derived from illegal employment.

## **Analysis**

As with most new laws in China, it is too soon to assess the impact that the New Law will have on expats and Chinese returnees. The New Law provides authorities with expanded enforcement powers which will be heavily influenced by local implementing regulations and practices to be rolled out later in the year. Whether the authorities have the resources or the inclination to enforce the New Law consistently remains to be seen.

Within the foreign business community, the reaction to the New Laws has so far been mixed. The increased clarity and flexibility of the New Law are both welcome changes. The additional visa categories under the New Law will enable a broader range of foreigners to visit China. Nevertheless, the New Law introduces much tighter restrictions on visa procedures. Examples include:

- Z visas are now subject to age requirements, which will mean difficulties in obtaining these visas for foreign men over 60 and women over 55 (ie: PRC retirement age);
- all expats coming to China for work, even for short-term stints, need to apply for a Z1 or Z2 visa whereas under the Old Law, they only needed a Z visa for periods of employment lasting more than 90 days;
- tightening of visa renewals within China, requiring visa holders to renew outside of China;
- a new "90 day rule" is now in effect, limiting the cumulative stay of business visa holders to no more than 90 days in any calendar year (expats are no longer able to restart the 90 day clock by simply renewing their visas);
- longer processing times and more scrutiny on visa applications;
- restrictions on expats working from home or at other offsite locations which will pose challenges for some employers; and
- medical examinations are now required for all expats over the age of 16 whereas under the Old Law, these were mandatory only for those 18 years old and above.

## **Recommendations**

The New Law signals a sharp change in the way that the PRC government regulates foreign workers.

As the New Law is phased in, employers and their foreign recruits should expect longer visa processing times and onerous new local restrictions such as proof of no criminal record overseas. Employers employing interns will need to stay tuned for new rules and procedures regarding visa arrangements.

The Public Security Bureau (ie: the police) is now authorized to make on-the-spot compliance checks of expats and anyone employing them so employers should also take steps to ensure that their recruitment and HR practices comply with the New Law. Employers should expect periodic inspections of their employee records and prepare for these by ensuring that records are properly maintained. HR staff also need to be briefed on how to respond to these inspections.

The penalties available under the New Law are severe and to avoid these, employers will need to satisfy themselves that every expat on their payroll has proper visa and residence documentation. As always, a change of employment will normally require that the expat and his/her employer apply for a new work visa and residence permit.

If any foreign staff are found to be working illegally, steps will need to be taken to avoid arrest, fines and possible deportation. Most localities (including Beijing and Shanghai) have a prescribed series of steps that can be taken to rectify illegal employment or breach of visa conditions.

### **Additional Information**

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