

## Labor Case Study: Terminating a Manager in China

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When it comes to hiring and firing in China, foreign managers and investors should not hold preconceived ideas about the strictness of China's laws. Highly publicized cases of worker exploitation might give the impression that China unambiguously favors employers, but this is not so. In fact, China's laws for firing employees are considerably more rigid than those in the U.S.

Firing managers is an especially complicated process in China that requires a thorough understanding of the country's laws. Even before a decision to fire someone has been made, proactively preventing risks related to HR is important. In this article, we present a case study that illustrates how a successful termination can be made.

### Background

Mark joined a supermarket in 2011 as a sales manager in its sales department. In 2012, he entered into an agreement to buy products from a relative's company without notifying his employer. The supermarket discovered this one year later, deemed it to be in violation of their Employment Handbook, and decided to rescind Mark's labor contract.

Mark believed that the supermarket had rescinded his labor contract simply because they did not wish to continue employing him. He therefore applied for arbitration, claiming that he had been illegally terminated. Because his employer did not give a written notice to him 30 days in advance, he requested that the supermarket compensate him on the basis of his service period in addition to a severance payment of one month's wage.

The supermarket took the stance that the rescission abided by the PRC's Labor Contract Law and its Employment Handbook, citing the rule that: "Any person that participates in and/or engages in conflicts of interest with the company without prior notification, as stipulated in the company's anti-bribery rules, is committing a serious violation. In this instance, [the] company can rescind the labor contract without any severance payment/compensation." As a result, Mark's labor contract was legally terminated without compensation.

### Outcome

The Arbitration Committee deemed that the rescission of the labor contract was lawful. Because there was a relevant stipulation in the Employment Handbook, Mark's transaction with his relative offended the company's interest. It was also in breach of Article 39(2) of the PRC's *Labor Contract Law*. The Arbitration Committee therefore did not support Mark's claim.

### Key points

1. Whether or not the company can provide relevant evidence to prove that Mark violated the relevant stipulation in the Employment Handbook;
2. Whether or not the Employment Handbook is legal and valid.

## Analysis

According to the evidence provided by the employer, the case can be analyzed with the following points:

### 1. The facts of Mark's serious violation

As a sales manager for the supermarket, Mark entered into an agreement with his relative for their own interest without giving any prior notice to his employer. The supermarket provided a transcript which showed that Mark acknowledged he purchased products from his relative's company at a normal price, but did not report so. The supermarket also provided a record from the Public Security Bureau to prove that the owner of the company was Mark's relative.

### 2. Violation of relevant stipulation in the Employment Handbook

Based on the above facts, Mark's behavior matches the definition of a serious violation as stipulated in the supermarket's Employment Handbook.

### 3. The Employment Handbook is formulated by lawful procedure

In line with Article 4 of the PRC's *Labor Contract Law*, when an employer formulates, revises or decides on major matters pertaining to, for example, labor remuneration, working hours, rest periods and off days which directly involve the interests of workers, such matters are discussed by the employee representatives' congress, or all staff who make proposals and give their opinion, and the employer.

The supermarket provided the meeting minutes to demonstrate that they convened the employee representatives' congress and passed the Employment Handbook, which proves the Employment Handbook is legally formulated.

### 4. Employee is aware of and signed the Employment Handbook

The supermarket provided a record of Mark signing the Employment Handbook.

### 5. The rescission abided by legal termination procedures

An employer that unilaterally rescinds a labor contract must notify the labor union of the reason beforehand. In this case, the supermarket provided the relevant documents to prove that they sought the opinion of the labor union.

### 6. Relevant stipulation on rescission proposed by the employer

According to Article 39(2) of the PRC's *Labor Contract Law*, where the worker has committed a serious breach of the employer's rules, the employer may rescind the labor contract. In this case, Mark committed a serious breach, and the rescission of the labor contract proposed by the employer was therefore lawful.

## Notes



Article 6 in *the Law of the People's Republic of China on Mediation and Arbitration of Labor Disputes* states that, where a labor dispute arises, the parties concerned have to provide evidence for their own claims. If an employer intends to rescind the labor contract of an employee with the claim that the employee violated the rules and systems of the employer, they bear the burden of proof on rescission. Whether or not the employer wins this case hinges on providing adequate evidence to prove the rescission is lawful.

Based on the above, where an enterprise attempts to rescind a labor contract, we strongly recommend that the enterprise keep all relevant evidence, including the transcripts of conversation, meeting minutes, and receipt of employee signature of the Employment Handbook.

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