



# CHINA MATTERS

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in the People's Republic of China

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## Proposed Changes to the Maternity Insurance System in the People's Republic of China

BY [LESLI LIGORNER](#), [MITCH MOSVICK](#) & [HELEN TANG](#)

The laws and regulations governing employee benefits continue to evolve in the People's Republic of China ("PRC"). (See two China Matters newsletters on Social Insurance regulations – [April 2011](#) and [October 2011](#).) On November 21, 2011, the Legislative Affairs Office of the State Council of the People's Republic of China published a notice to seek public feedback on its proposed regulations, titled the *Special Labor Protection Regulations for Female Employees* ("Draft Regulations").

The Draft Regulations are prepared based on the Labor Protection Regulations for Female Employees, effective since September 1, 1988, and bring the PRC into line with the International Labor Organization standards, which reflect time in increments of "weeks" instead of "days". The Draft Regulations include certain changes in current laws and regulations, such as extended maternity leave and a more detailed scope of work prohibited for female employees, to reflect the society's development and public policy to provide greater protections to female employees before and after childbirth.

According to the Draft Regulations, the maternity leave for a female employee will be extended from 90 days to 14 weeks, two weeks of which can be taken prior to delivery. For a complicated delivery, employees will receive an additional two weeks' maternity leave. Employees who give birth to multiple babies in one delivery (*i.e.*, twins) will be entitled to an additional two weeks' maternity leave for each additional birth. Further, employees who have an early termination of their pregnancy (including induced abortion) within the first four months of pregnancy will be entitled to a minimum of two weeks' leave. Employees who have an early termination of pregnancy (including an induced abortion) upon or after the fourth month of pregnancy will be entitled to a minimum of six weeks' leave.

Below is a chart which reflects the minimum maternity leave under different situations according to the Draft Regulations, the current national law, and local regulations as implemented in Beijing, Shanghai, and Guangzhou.

	<b>Draft Regulations</b>	<b>National</b>	<b>Beijing</b>	<b>Shanghai</b>	<b>Guangzhou</b>
<b>Normal Delivery</b>	14 weeks (2 weeks of which can be taken prior to the delivery)	90 days (15 days of which can be taken prior to the delivery)	Same as National	Same as National	Same as National
<b>Complicated Delivery</b>	Additional 2 weeks	Additional 15 days	Same as National	Same as National	Additional 15 days or 30 days <sup>1</sup>
<b>Multiple Babies in One Delivery</b>	Additional 2 weeks for each additional birth	Additional 15 days for each additional birth	Same as National	Same as National	Same as National
<b>Early Termination<sup>2</sup></b>	At least 2 weeks (within the first four months of pregnancy);  at least 6 weeks (upon or after the 4th month of pregnancy)	15-30 days (within the first four months of pregnancy);  at least 42 days (upon or after the 4th month of pregnancy)	15 days (within the first 12 weeks of pregnancy);  30 days (within 12-16 weeks of pregnancy);  42 days (within 16-28 weeks of pregnancy);  90 days (after 28 weeks of pregnancy)	30 days (within the first three months of pregnancy);  45 days (within 3rd to the 7th month of pregnancy)	15-30 days (within the first four months of pregnancy); 42 days (4th-7th month of pregnancy);  75 days (upon or after the 7th month of pregnancy)
<b>Late Birth<sup>3</sup></b>	Silent	Silent	Additional 30 days	Additional 30 days	Additional 15 days
<b>Single Child</b>	Silent	Silent	Silent	Silent	Additional 35 days

Where the local regulations provide more than the national regulations, the local regulations will continue to apply. Where the national regulations provide more than the local regulations, the national regulations apply.

The Draft Regulations also provide the scope of work that is prohibited for female employees in detail in an appendix to the Draft Regulations.

Employers should continue to monitor the developments in this area in order to ensure that they adapt and provide the requisite benefits, in the likely event that the Draft Regulations take effect in their current form.

Paul Hastings LLP is a global law firm with 18 offices in Asia, Europe and the United States. Paul Hastings has one of the largest, full-service, multi-jurisdictional legal practices in Asia with legal professionals in Beijing, Hong Kong, Shanghai and Tokyo.

Please feel free to discuss any aspect of this newsletter with your existing Paul Hastings contacts or any of the lawyers listed below:

**BEIJING**

Helen Tang: [helentang@paulhastings.com](mailto:helentang@paulhastings.com)

**SHANGHAI**

Lesli Ligorner: [lesliligorner@paulhastings.com](mailto:lesliligorner@paulhastings.com)

**WASHINGTON D.C.**

Mitchell A. Mosvick: [mitchellmosvick@paulhastings.com](mailto:mitchellmosvick@paulhastings.com)

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<sup>1</sup> There will be an additional 30 days' leave for a complicated delivery related to a Caesarean birth or a grade 3 perineal rupture, or an additional 15 days' leave for a complicated delivery related to an aspirator delivery, forceps delivery, or a breech delivery.

<sup>2</sup> In Shanghai, an "early termination" of pregnancy means a miscarriage or ectopic pregnancy.

<sup>3</sup> In Beijing and Shanghai, a female employee's giving birth to her first child at 24 years old or later is regarded as a "late birth." In Guangzhou, a female employee's bearing her first child at the age of 23 years old or later is regarded as a late birth.