

THIRD-PARTY NEGLIGENCE, YOUR PROBLEM?

“A SMALL STRAW CAN BREAK A CAMEL'S BACK”

When discussing business opportunities in China, it is only natural that we weigh the risks involved. One risk that often surprises foreign managers in China is the consequences tied to third-party negligence.

For instance, we frequently encounter shortcomings among suppliers working on-site, such as temporary workers from outsourcing companies or security firms, when conducting risk assessments at production facilities in China for many of our clients. These often relate to employment contracts and social security contributions. Such shortcomings can have consequences for the customer of a supplier. Let's look at one example.

Under Chinese law, employers are legally required to provide employment contracts to their employees and contribute to social security on their employees' behalf, including pension, medical, unemployment, work injury, and maternity insurance. Any attempt to waive an employer's obligation to contribute to social security in an employment contract or side agreement is null and void under Chinese employment law.

Furthermore, if a company uses a supplier (e.g., a guard company) that fails to fulfil its social security obligations, the client company (i.e., the factory or business using outsourced employees) may still face joint or partial liability if the supplier's employee (e.g., a security guard) files a complaint or lawsuit.

Chinese employment law and judicial practice recognize a duty of care for businesses using outsourced staffing or third-party services, such as security, cleaning, or logistics. These businesses must ensure that the service providers follow basic employment laws covering prompt wage payments, participation in social security, and lawful employment status.

However, what is crucially important yet often neglected are procedures for onboarding new suppliers. Internally, many businesses assume that compliance is monitored, but this is not always the case. Unfortunately, it is often left to the supplier to certify compliance with the requirements, but real compliance checks are rarely carried out.

Companies can face expensive consequences when individuals perceived to be someone else's responsibility make demands over pre-existing deficiencies. These deficiencies could have easily been identified if the client had compliance control procedures in place before signing the agreement with the supplier.

Not only should a business ensure that these deficiencies do not exist when signing the agreement, but they should also follow up on them regularly. We must remember that just because we do not identify a risk at one point in time does not mean that it cannot arise if we do not regularly follow up, work with risk management, and ensure independent risk and compliance audits.