Employment Contract Law Implementation Regulations of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1: These Regulations are formulated in accordance with the Employment Contract Law of the People’s Republic of China for the purpose of implementing the Employment Contract Law.

Article 2: The labor administrative authorities of people’s governments at all levels and other relevant departments shall, within the scope of their respective duties, supervise and guide the conclusion, performance, modification, rescission, and termination of employment contracts.

Article 3: The term “employer” as used in these Regulations includes enterprises, individually-owned businesses, private non-enterprise entities, accounting firms, law firms, and other organizations that have lawfully obtained business licenses or registration certificates, as well as state organs, public institutions, and social organizations that have concluded employment contracts with employees.

Chapter II — Conclusion of Employment Contracts

Article 4: Where an employer establishes an employment relationship with an employee but fails to conclude a written employment contract for more than one month but less than one year from the date of employment, it shall pay the employee twice the monthly wage in accordance with Article 82 of the Employment Contract

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Law.

Article 5: Where an employee does not conclude a written employment contract with the employer within one month from the date of employment despite the employer's written notice, the employer shall notify the employee in writing to terminate the employment relationship and shall pay the employee for work performed without being required to pay economic compensation.

Article 6: Where an employer fails to conclude a written employment contract with an employee for a full year from the date of employment, it shall be deemed to have concluded an open-ended employment contract with the employee from the date when one year has elapsed from the date of employment. In such case, the employer shall immediately conclude a written employment contract with the employee.

Article 7: Where an employer and an employee conclude a fixed-term employment contract, and upon expiration of the term, the employee continues to work for the employer under any of the circumstances specified in Article 14 of the Employment Contract Law, the employer shall conclude an open-ended employment contract with the employee unless the employee proposes to conclude a fixed-term employment contract.

Article 8: The calculation of the employee's continuous working period with the employer for the purpose of Article 14 of the Employment Contract Law shall include the period before the implementation of the Employment Contract Law. Where the employee's working period with the employer is interrupted due to reasons attributable to the employer, the working period shall be calculated on a continuous basis.

Chapter III — Rescission and Termination of Employment Contracts

Article 9: Where an employer rescinds an employment contract by paying an additional month's wage in lieu of notice pursuant to Article 40 of the Employment Contract Law, the additional month's wage shall be determined based on the employee's wage for the preceding month.

Article 10: An employee may unilaterally rescind the employment contract under any of the following circumstances specified in Article 38 of the Employment Contract Law: (1) the employer fails to provide labor protection or working conditions as stipulated in the employment contract; (2) the employer fails to pay labor remuneration in full and on time; (3) the employer fails to pay social insurance premiums for the employee in accordance with the law; (4) the employer's rules and regulations violate laws or regulations and harm the employee's rights and interests; or (5) the employment contract is null and void under Article 26 of the Employment Contract Law.

Article 11: Where an employee has worked for the same employer for at least 15 years and is less than five years from the statutory retirement age, the employer shall not rescind the employment contract under Article 40 or Article 41 of the Employment Contract Law.

Article 12: The minimum standard for the living allowance payable to an employee during the medical treatment period shall be 80% of the local minimum wage.

Article 13: Where an employer needs to lay off 20 or more employees, or lay off fewer than 20 employees but accounting for 10% or more of the total number of employees, the employer shall explain the circumstances to the trade union or all employees 30 days in advance and report the layoff plan to the labor administrative authority.

Article 14: The economic compensation payable by an employer to an employee under Article 46 of the Employment Contract Law shall be calculated based on the employee's years of service with the employer, at the rate of one month's wage for each full year of service. Periods of six months or more but less than one year shall be counted as one year; periods of less than six months shall be compensated at half a month's wage.

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Chapter IV — Special Provisions on Labor Dispatch

Article 15: Labor dispatch entities shall not second dispatched employees in a non-labor dispatch form. Labor dispatch entities and accepting entities shall not charge fees to dispatched employees.

Article 16: The labor dispatch agreement between the labor dispatch entity and the accepting entity shall specify: (1) the positions and places of the dispatched work; (2) the number of dispatched personnel and the dispatch period; (3) the amount and payment method of labor remuneration; (4) the amount and payment method of social insurance premiums; and (5) liability for breach of the agreement.

Article 17: Where a dispatched employee is injured at work, the labor dispatch entity shall apply for work-related injury recognition. The accepting entity shall assist in the investigation and verification.

Chapter V — Legal Liability

Article 18: Where an employer violates the provisions of the Employment Contract Law by failing to conclude a written employment contract with an employee, it shall pay the employee twice the monthly wage in accordance with the law. The starting date for calculating the double wage shall be the day following the expiration of one month from the date of employment, and the ending date shall be the day preceding the conclusion of the written employment contract.

Article 19: Where an employer unlawfully rescinds or terminates an employment contract, it shall pay compensation to the employee at twice the rate of the economic compensation stipulated in Article 47 of the Employment Contract Law.

Article 20: Where an employer rescinds or terminates an employment contract and fails to pay economic compensation to the employee in accordance with the law, the labor administrative authority shall order it to pay within a prescribed time limit; where it fails to pay within the prescribed time limit, it shall be ordered to pay additional compensation at a rate of not less than 50% but not more than 100% of the amount payable.

Article 21: Where a labor dispatch entity or an accepting entity violates the provisions on labor dispatch, the labor administrative authority shall order it to make corrections; where the circumstances are serious, a fine of not less than 1,000 yuan but not more than 5,000 yuan per dispatched employee shall be imposed.

Chapter VI — Supplementary Provisions

Article 22: The human resources and social security administrative authority of the State Council shall be responsible for the interpretation of these Regulations.

Article 23: These Regulations shall enter into force as of September 18, 2008.

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