

Labor Contract Law of the People’s Republic of China (2012 Amendment)

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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 — This Law is enacted for the purposes of improving the labor contract system, clarifying the rights and obligations of both parties to labor contracts, protecting the lawful rights and interests of workers, and establishing and developing harmonious and stable labor relations.

Article 2 — This Law shall apply to enterprises, individual economic organizations, private non-enterprise entities and other organizations (hereinafter referred to as “employers”) within the territory of the People’s Republic of China in their establishment of labor relations with workers and the conclusion, performance, modification, rescission or termination of labor contracts.

State organs, public institutions, social organizations and the workers with whom they establish labor relations shall be governed by this Law in the conclusion, performance, modification, rescission or termination of labor contracts.

Article 3 — Labor contracts shall be concluded in accordance with the principles of legality, fairness, equality, voluntariness, consensus through consultation and good faith.

A labor contract lawfully concluded shall be binding, and the employer and the worker shall perform the obligations stipulated in the labor contract.

Article 4 — Employers shall establish and improve labor rules and regulations in accordance with the law to ensure that workers enjoy their labor rights and perform their labor obligations.

When an employer formulates, modifies or decides on rules and regulations or major matters that directly affect the immediate interests of workers, such as those concerning labor remuneration, working hours, rest and vacations, occupational safety and health, insurance and welfare benefits, employee training, labor discipline and labor quota management, such matters shall be discussed by the workers’ representative assembly or all workers, which shall put forward proposals and opinions, and shall be determined through equal consultation with the trade union or worker representatives.

In the course of implementing rules and regulations and decisions on major matters, if the trade union or workers consider them inappropriate, they shall have the right to raise the matter with the employer and have the rules or decisions amended and improved through consultation.

Employers shall publicize or inform workers of the rules and regulations and decisions on major matters that directly affect the immediate interests of workers.

Article 5 — The labor administrative departments of people’s governments at or above the county level shall, together with trade unions and enterprise-side representatives, establish and improve a tripartite mechanism for coordinating labor relations and jointly study and resolve major issues concerning labor relations.

Article 6 — Trade unions shall assist and guide workers in concluding and performing labor contracts with employers in accordance with the law, and shall establish a collective consultation mechanism with employers to safeguard the lawful rights and interests of workers.

Chapter II — Conclusion of Labor Contracts

Article 7 — An employer shall establish a labor relationship with a worker from the date on which the worker commences work. The employer shall prepare a roster of employees for future reference.

Article 8 — When recruiting a worker, the employer shall truthfully inform the worker of the content of the work, working conditions, place of work, occupational hazards, safety and production conditions, labor remuneration and other information that the worker requests to be informed of. The employer shall have the right to obtain basic information directly related to the labor contract from the worker, and the worker shall provide such information truthfully.

Article 9 — When recruiting a worker, the employer shall not detain the worker’s resident identity card or other certificates, nor shall it require the worker to provide a guarantee or collect property from the worker under any other pretext.

Article 10 — A written labor contract shall be concluded when a labor relationship is established.

Where a labor relationship has been established but a written labor contract has not been concluded simultaneously, a written labor contract shall be concluded within one month from the date on which the worker commences work.

Where an employer and a worker conclude a labor contract before the worker commences work, the labor relationship shall be established from the date on which the worker commences work.

Article 11 — Where an employer fails to conclude a written labor contract at the time the worker commences work and the labor remuneration agreed upon with the worker is unclear, the labor remuneration for the newly recruited worker shall be implemented in accordance with the standards stipulated in the collective contract; where there is no collective contract or the collective contract contains no such provision, equal pay for equal work shall be implemented.

Article 12 — Labor contracts shall be divided into fixed-term labor contracts, non-fixed-term labor contracts, and labor contracts with a term based on the completion of a specific task.

Article 13 — A fixed-term labor contract means a labor contract in which the employer and the worker agree on a termination date for the contract.

An employer and a worker may conclude a fixed-term labor contract upon reaching consensus through consultation.

Article 14 — A non-fixed-term labor contract means a labor contract in which the employer and the worker agree on no definite termination date.

An employer and a worker may conclude a non-fixed-term labor contract upon reaching consensus through consultation. Under any of the following circumstances, where a worker proposes or agrees to renew or conclude a labor contract, a non-fixed-term labor contract shall be concluded, unless the worker proposes to conclude a fixed-term labor contract:

1. The worker has worked for the employer continuously for ten or more years; 2. When the employer implements the labor contract system for the first time or re-concludes labor contracts upon restructuring of a State-owned enterprise, the worker has worked for the employer continuously for ten or more years and is less than ten years from his statutory retirement age; 3. Two fixed-term labor contracts have been concluded consecutively, and the worker does not fall under any of the circumstances specified in Article 39 and Article 40(1) and (2) of this Law, and the contract is being renewed.

Where an employer fails to conclude a written labor contract with a worker within one year from the date on which the worker commences work, the employer and the worker shall be deemed to have concluded a non-fixed-term labor contract.

Article 15 — A labor contract with a term based on the completion of a specific task means a labor contract in which the employer and the worker agree that the completion of a specific task shall be the term of the contract.

An employer and a worker may conclude a labor contract with a term based on the completion of a specific task upon reaching consensus through consultation.

Article 16 — A labor contract shall become effective when the employer and the worker reach consensus through consultation and both sign or affix their seals to the text of the labor contract.

The employer and the worker shall each hold one copy of the labor contract text.

Article 17 — A labor contract shall contain the following clauses:

1. The name, domicile, and legal representative or principal responsible person of the employer; 2. The name, address, and resident identity card number or other valid identity document number of the worker; 3. The term of the labor contract; 4. The content of the work and the place of work; 5. Working hours and rest

and vacations; 6. Labor remuneration; 7. Social insurance; 8. Labor protection, working conditions and protection against occupational hazards; 9. Other matters that laws and regulations require to be included in a labor contract.

In addition to the mandatory clauses specified in the preceding paragraph, the employer and the worker may agree on other matters such as the probation period, training, confidentiality, supplementary insurance and welfare benefits.

Article 18 — Where a labor contract is unclear on matters such as labor remuneration and working conditions standards, giving rise to a dispute, the employer and the worker may renegotiate; if negotiation fails, the provisions of the collective contract shall apply; if there is no collective contract or the collective contract contains no provisions on labor remuneration, equal pay for equal work shall be implemented; if there is no collective contract or the collective contract contains no provisions on standards such as working conditions, the relevant State provisions shall apply.

Article 19 — Where the term of a labor contract is three months or more but less than one year, the probation period shall not exceed one month; where the term of a labor contract is one year or more but less than three years, the probation period shall not exceed two months; for a fixed-term labor contract of three years or more or a non-fixed-term labor contract, the probation period shall not exceed six months.

The same employer and the same worker may agree on a probation period only once.

No probation period may be agreed upon for a labor contract with a term based on the completion of a specific task or for a labor contract with a term of less than three months.

The probation period shall be included in the term of the labor contract. Where a labor contract provides only for a probation period, the probation period shall not be established, and the term shall be the term of the labor contract.

Article 20 — The wage of a worker during the probation period shall not be lower than the lowest wage for the same position in the employer or 80 percent of the wage agreed upon in the labor contract, and shall not be lower than the minimum wage standard of the place where the employer is located.

Article 21 — During the probation period, the employer shall not rescind the labor contract unless the worker falls under the circumstances specified in Article 39 and Article 40(1) and (2) of this Law. Where the employer rescinds the labor contract during the probation period, it shall explain the reasons to the worker.

Article 22 — Where an employer provides special training expenses for a worker and provides him with specialized technical training, the employer may enter into an agreement with the worker agreeing on a service period.

Where the worker breaches the service period agreement, he shall pay liquidated damages to the employer in accordance with the agreement. The amount of liquidated damages shall not exceed the training expenses provided by the employer. The liquidated damages that the employer requires the worker to pay shall not exceed the training expenses that should be apportioned for the unperformed portion of the service period.

Where an employer and a worker agree on a service period, this shall not affect the increase in the worker's labor remuneration during the service period in accordance with the normal wage adjustment mechanism.

Article 23 — An employer and a worker may agree in the labor contract on the protection of the employer's trade secrets and confidentiality matters relating to intellectual property rights.

For a worker who has a confidentiality obligation, the employer may agree with the worker on non-competition provisions in the labor contract or confidentiality agreement and agree that the employer shall provide monthly economic compensation to the worker during the non-competition period after the rescission or termination of the labor contract. Where the worker breaches the non-competition agreement,

he shall pay liquidated damages to the employer in accordance with the agreement.

Article 24 — Personnel subject to non-competition shall be limited to the employer's senior management personnel, senior technical personnel and other personnel with confidentiality obligations. The scope, geographical area and period of non-competition shall be agreed upon by the employer and the worker, and the non-competition agreement shall not violate the provisions of laws and regulations.

After the rescission or termination of a labor contract, the non-competition period for the personnel specified in the preceding paragraph who go to work for other employers that produce or deal in similar products or engage in similar businesses and are in competition with their original employer, or who start their own business producing or dealing in similar products or engaging in similar businesses, shall not exceed two years.

Article 25 — Except for the circumstances specified in Articles 22 and 23 of this Law, an employer shall not agree with a worker on the worker bearing liquidated damages.

Article 26 — The following labor contracts shall be invalid or partially invalid:

1. Labor contracts concluded or modified by means of fraud, coercion or taking advantage of another party's difficulties, causing the other party to conclude or modify the contract contrary to its true intention; 2. Labor contracts in which the employer disclaims its statutory liability or excludes the worker's rights; 3. Labor contracts that violate mandatory provisions of laws or administrative regulations.

Disputes over the invalidity or partial invalidity of a labor contract shall be confirmed by a labor dispute arbitration institution or a people's court.

Article 27 — Where a labor contract is partially invalid and the validity of the other parts is not affected, the other parts shall remain valid.

Article 28 — Where a labor contract is confirmed to be invalid and the worker has already performed work, the employer shall pay labor remuneration to the worker. The amount of labor remuneration shall be determined by reference to the labor remuneration of workers in the same or similar positions in the employer.

Chapter III — Performance and Modification of Labor Contracts

Article 29 — The employer and the worker shall fully perform their respective obligations in accordance with the labor contract.

Article 30 — The employer shall, in accordance with the labor contract and State provisions, pay labor remuneration to the worker in full and on time.

Where the employer defaults on or fails to pay labor remuneration in full, the worker may apply to the local people's court for a payment order in accordance with the law, and the people's court shall issue the payment order in accordance with the law.

Article 31 — Employers shall strictly implement labor quota standards and shall not compel or covertly compel workers to work overtime. Where the employer arranges overtime work, it shall pay overtime pay to the worker in accordance with State provisions.

Article 32 — A worker's refusal to carry out operations where the employer's management personnel give instructions in violation of regulations or compel workers to undertake hazardous operations shall not be deemed a breach of the labor contract.

A worker shall have the right to criticize, report or bring charges against the employer in relation to working conditions that endanger his life, safety and health.

Article 33 — A change in the employer's name, legal representative, principal responsible person or investors shall not affect the performance of the labor contract.

Article 34 — Where an employer undergoes a merger or division, the original labor contract shall continue to be valid and shall continue to be performed by the employer that succeeds to its rights and obligations.

Article 35 — An employer and a worker may modify the content of a labor contract upon reaching consensus through consultation. The modification of a labor contract shall be made in writing.

The employer and the worker shall each hold one copy of the modified labor contract text.

Chapter IV — Rescission and Termination of Labor Contracts

Article 36 — An employer and a worker may rescind a labor contract upon reaching consensus through consultation.

Article 37 — A worker may rescind a labor contract by notifying the employer in writing 30 days in advance. A worker may rescind a labor contract by notifying the employer three days in advance during the probation period.

Article 38 — A worker may rescind a labor contract under any of the following circumstances on the part of the employer:

1. Failing to provide labor protection or working conditions as agreed in the labor contract; 2. Failing to pay labor remuneration in full and on time; 3. Failing to pay social insurance premiums for the worker in accordance with the law; 4. The employer's rules and regulations violate laws or regulations, harming the worker's rights and interests; 5. The labor contract is invalid due to the circumstances specified in Article 26(1) of this Law; 6. Other circumstances prescribed by laws or administrative regulations under which the worker may rescind the labor contract.

Where the employer forces the worker to work by means of violence, threats or illegal restriction of personal freedom, or where the employer gives instructions in violation of regulations or compels the worker to undertake hazardous operations endangering the worker's personal safety, the worker may immediately rescind the labor contract without prior notice to the employer.

Article 39 — An employer may rescind a labor contract under any of the following circumstances on the part of the worker:

1. Being proved during the probation period not to satisfy the recruitment conditions; 2. Seriously violating the employer's rules and regulations; 3. Causing significant damage to the employer through serious dereliction of duty or engagement in malpractices for personal gain; 4. The worker has simultaneously established a labor relationship with another employer, seriously affecting the completion of his work tasks for the employer, or refusing to rectify the situation after the employer raises the matter; 5. The labor contract is invalid due to the circumstances specified in Article 26(1)(1) of this Law; 6. Being subject to criminal liability in accordance with the law.

Article 40 — An employer may rescind a labor contract under any of the following circumstances by notifying the worker in writing 30 days in advance or by paying the worker an additional one month's wage:

1. The worker is unable to perform the original work or any other work arranged by the employer after the expiration of the prescribed medical treatment period for illness or non-work-related injury; 2. The worker is incompetent for the work and remains incompetent after training or adjustment of the work position; 3. The objective circumstances on which the labor contract was based have changed significantly, rendering the labor contract impossible to perform, and the employer and the worker are unable to reach agreement on modification of the labor contract through consultation.

Article 41 — Under any of the following circumstances, where it is necessary to reduce the workforce by 20 or more persons, or by fewer than 20 persons but accounting for 10 percent or more of the total workforce of the enterprise, the employer may reduce the workforce after explaining the situation to the trade union or all workers 30 days in advance, hearing the opinions of the trade union or workers, and reporting the workforce reduction plan to the labor administrative department:

1. Restructuring in accordance with the provisions of the Enterprise Bankruptcy Law; 2. Serious difficulties in production and business operations; 3. Where the enterprise changes its product lines, undergoes major technological innovation or adjusts its mode of business operation, and still needs to reduce its workforce after modifying the labor contracts; 4. Other circumstances where the objective economic situation on which the labor contract was based has changed significantly, rendering the labor contract impossible to perform.

When reducing the workforce, the following workers shall be retained as a matter of priority:

1. Workers who have concluded relatively long-term fixed-term labor contracts with the employer; 2. Workers who have concluded non-fixed-term labor contracts with the employer; 3. Workers who have no other employed persons in their families and have elderly persons or minors to support.

Where an employer that has reduced its workforce in accordance with the first paragraph of this Article recruits workers again within six months, it shall notify the workers who were laid off and shall give priority to recruiting the laid-off workers under equal conditions.

Article 42 — An employer shall not rescind a labor contract in accordance with Articles 40 and 41 of this Law under any of the following circumstances on the part of the worker:

1. A worker engaged in operations exposing him to occupational disease hazards has not undergone a pre-departure occupational health examination, or is a suspected occupational disease patient under diagnosis or medical observation; 2. The worker has suffered an occupational disease or a work-related injury in the employer and has been confirmed to have lost or partially lost the capacity to work; 3. The worker is ill or injured and is within the prescribed medical treatment period; 4. A female worker is in pregnancy, childbirth or lactation; 5. The worker has worked for the employer continuously for 15 or more years and is less than five years from the statutory retirement age; 6. Other circumstances prescribed by laws or administrative regulations.

Article 43 — Where an employer unilaterally rescinds a labor contract, it shall notify the trade union of the reasons in advance. Where the employer violates laws, administrative regulations or the labor contract, the trade union shall have the right to require the employer to rectify the situation. The employer shall consider the trade union's opinions and notify the trade union in writing of the outcome of its handling of the matter.

Article 44 — A labor contract shall terminate under any of the following circumstances:

1. The term of the labor contract expires; 2. The worker commences receiving basic pension insurance benefits in accordance with the law; 3. The worker dies, or is declared dead or missing by a people's court; 4. The employer is declared bankrupt in accordance with the law; 5. The employer's business license is revoked, the employer is ordered to close down or is dissolved, or the employer decides on early dissolution; 6. Other circumstances prescribed by laws or administrative regulations.

Article 45 — Where a labor contract expires and any of the circumstances specified in Article 42 of this Law exists, the labor contract shall be extended until the relevant circumstance ceases to exist and shall then terminate. However, the termination of the labor contract of a worker who has lost or partially lost the capacity to work as specified in Article 42(2) of this Law shall be handled in accordance with the relevant State provisions on work-related injury insurance.

Article 46 — An employer shall pay economic compensation to a worker under any of the following circumstances:

1. The worker rescinds the labor contract in accordance with Article 38 of this Law; 2. The employer proposes to rescind the labor contract to the worker in accordance with Article 36 of this Law and rescinds the labor contract upon reaching consensus through consultation with the worker; 3. The employer rescinds the labor contract in accordance with Article 40 of this Law; 4. The employer rescinds the labor contract in accordance with the first paragraph of Article 41 of this Law; 5. A fixed-term labor contract is terminated in accordance with Article 44(1) of this Law, except where the worker does not agree to renew the contract even though the employer maintains or improves the conditions stipulated in the labor contract; 6. The labor contract is terminated in accordance with Article 44(4) and (5) of this Law; 7. Other circumstances prescribed by laws or administrative regulations.

Article 47 — Economic compensation shall be paid to the worker based on the number of years the worker has worked for the employer, at the rate of one month's wage for each full year worked. Where the period is six months or more but less than one year, it shall be counted as one year; where the period is less than six months, economic compensation of half a month's wage shall be paid to the worker.

Where the monthly wage of a worker is three times higher than the average monthly wage of workers in the region for the preceding year as published by the people's government of the municipality directly under the Central Government or of the city divided into districts where the employer is located, the rate for the economic compensation paid to the worker shall be three times the average monthly wage of workers, and the period for which economic compensation is paid shall not exceed 12 years.

For the purposes of this Article, "monthly wage" means the average monthly wage of the worker for the 12 months preceding the rescission or termination of the labor contract.

Article 48 — Where an employer rescinds or terminates a labor contract in violation of this Law and the worker requests continued performance of the labor contract, the employer shall continue to perform the contract; where the worker does not request continued performance of the labor contract or continued performance of the labor contract is no longer possible, the employer shall pay compensation in accordance with Article 87 of this Law.

Article 49 — The State shall adopt measures to establish and improve a system for the transfer and continuation of workers' social insurance relationships across regions.

Article 50 — An employer shall, upon rescission or termination of a labor contract, issue a certificate of rescission or termination of the labor contract and complete the procedures for the transfer of the worker's file and social insurance relationship within 15 days.

The worker shall complete the handover of work in accordance with the agreement between the parties. Where the employer is required to pay economic compensation to the worker in accordance with the relevant provisions of this Law, such payment shall be made upon completion of the work handover procedures.

The employer shall keep the text of the rescinded or terminated labor contract for at least two years for future reference.

Chapter V — Special Provisions

Section 1 — Collective Contracts

Article 51 — The workers of an enterprise and the employer may, through equal consultation, conclude a collective contract on matters such as labor remuneration, working hours, rest and vacations, occupational safety and health, and insurance and welfare benefits. The draft collective contract shall be submitted to the workers' representative assembly or all workers for discussion and approval.

A collective contract shall be concluded by the trade union on behalf of the workers with the employer; where no trade union has been established in the employer, the contract shall be concluded by representatives elected by the workers under the guidance of the trade union at the next higher level.

Article 52 — The workers of an enterprise and the employer may conclude specialized collective contracts on matters such as occupational safety and health, protection of the rights and interests of female workers, and wage adjustment mechanisms.

Article 53 — In regions at or below the county level, trade unions and enterprise-side representatives in industries such as construction, mining, and catering services may conclude industry-wide collective contracts or regional collective contracts.

Article 54 — A collective contract shall be submitted to the labor administrative department after conclusion; the collective contract shall become effective if the labor administrative department raises no objection within 15 days from the date of receipt of the text of the collective contract.

A collective contract lawfully concluded shall be binding on the employer and the workers. Industry-wide and regional collective contracts shall be binding on employers and workers in the relevant industry or region in the locality.

Article 55 — The standards of labor remuneration and working conditions stipulated in a collective contract shall not be lower than the minimum standards prescribed by the local people's government; the standards of labor remuneration and working conditions stipulated in the labor contract between an employer and a worker shall not be lower than those stipulated in the collective contract.

Article 56 — Where an employer breaches a collective contract and infringes upon the labor rights and interests of workers, the trade union may require the employer to bear liability in accordance with the law; where a dispute arises from the performance of a collective contract and cannot be resolved through consultation, the trade union may apply for arbitration or file a lawsuit in accordance with the law.

Section 2 — Labor Dispatch

Article 57 — The following conditions shall be satisfied for conducting labor dispatch business:

1. Registered capital of no less than RMB 2,000,000; 2. Fixed business premises and facilities commensurate with the business conducted; 3. Labor dispatch management rules that comply with laws and administrative regulations; 4. Other conditions prescribed by laws and administrative regulations.

To conduct labor dispatch business, an application for administrative licensing shall be filed with the labor administrative department in accordance with the law; upon obtaining the license, the relevant company registration shall be completed in accordance with the law. Without a license, no entity or individual shall conduct labor dispatch business.

Article 58 — A labor dispatch service provider shall be the employer as referred to in this Law and shall perform the employer's obligations toward the workers. In addition to the matters specified in Article 17 of this Law, the labor contract concluded between a labor dispatch service provider and a dispatched worker shall also specify the host entity, dispatch period, work position and other information of the dispatched worker.

A labor dispatch service provider shall conclude a fixed-term labor contract of two years or more with the dispatched worker and pay labor remuneration on a monthly basis; during periods when the dispatched worker has no work, the labor dispatch service provider shall pay remuneration to the worker on a monthly basis at the minimum wage standard prescribed by the people's government of the place where the labor dispatch service provider is located.

Article 59 — A labor dispatch service provider dispatching workers shall enter into a labor dispatch agreement with the entity that accepts workers in the form of labor dispatch (hereinafter referred to as the "host entity"). The labor dispatch agreement shall specify the dispatched positions, number of personnel, dispatch period, amounts and payment methods of labor remuneration and social insurance premiums, and liability for breach of the agreement.

The host entity shall determine the dispatch period with the labor dispatch service provider based on the actual needs of the work position and shall not divide a continuous employment period into several short-term labor dispatch agreements.

Article 60 — The labor dispatch service provider shall inform the dispatched workers of the content of the labor dispatch agreement.

The labor dispatch service provider shall not deduct any portion of the labor remuneration paid by the host entity to the dispatched workers in accordance with the labor dispatch agreement.

The labor dispatch service provider and the host entity shall not collect fees from the dispatched workers.

Article 61 — Where a labor dispatch service provider dispatches workers across regions, the labor remuneration and working conditions enjoyed by the dispatched workers shall be implemented in accordance with the standards of the place where the host entity is located.

Article 62 — The host entity shall perform the following obligations:

1. Implementing State labor standards and providing corresponding working conditions and labor protection;
2. Informing the dispatched workers of the work requirements and labor remuneration;
3. Paying overtime pay and performance bonuses and providing welfare benefits related to the work position;
4. Providing the dispatched workers on the job with training necessary for the work position;
5. Implementing the normal wage adjustment mechanism for continuous employment.

The host entity shall not re-dispatch the dispatched workers to other employers.

Article 63 — Dispatched workers shall have the right to equal pay for equal work with the workers of the host entity. The host entity shall, in accordance with the principle of equal pay for equal work, apply the same labor remuneration distribution methods to dispatched workers and workers of the host entity in similar positions. Where the host entity has no workers in similar positions, the labor remuneration shall be determined by reference to the labor remuneration of workers in the same or similar positions at the place where the host entity is located.

The labor remuneration payable to dispatched workers as stated or agreed upon in the labor contract concluded between the labor dispatch service provider and the dispatched worker and in the labor dispatch agreement concluded with the host entity shall comply with the provisions of the preceding paragraph.

Article 64 — Dispatched workers shall have the right to participate in or organize trade unions in the labor dispatch service provider or the host entity in accordance with the law to safeguard their lawful rights and interests.

Article 65 — Dispatched workers may rescind their labor contracts with the labor dispatch service provider in accordance with Articles 36 and 38 of this Law.

Where a dispatched worker falls under the circumstances specified in Article 39 and Article 40(1) and (2) of this Law, the host entity may return the worker to the labor dispatch service provider, and the labor dispatch service provider may rescind the labor contract with the worker in accordance with the relevant provisions of this Law.

Article 66 — Labor contract employment is the basic form of enterprise employment in China. Labor dispatch employment is a supplementary form and may only be implemented in temporary, auxiliary or substitute work positions.

For the purposes of the preceding paragraph, “temporary work positions” mean positions that exist for no more than six months; “auxiliary work positions” mean non-core business positions that provide services to core business positions; “substitute work positions” mean positions in which a worker may be replaced by other workers during a certain period when the workers of the host entity are unable to work due to off-duty

study, vacation or other reasons.

The host entity shall strictly control the number of dispatched workers, which shall not exceed a certain proportion of its total workforce, the specific proportion to be prescribed by the labor administrative department of the State Council.

Article 67 — An employer shall not establish a labor dispatch service provider to dispatch workers to itself or its affiliated entities.

Section 3 — Part-Time Employment

Article 68 — Part-time employment means a form of employment in which remuneration is primarily calculated on an hourly basis, the worker generally works for no more than four hours per day on average and no more than 24 hours per week in aggregate for the same employer.

Article 69 — The parties to part-time employment may conclude an oral agreement.

A worker engaged in part-time employment may conclude labor contracts with one or more employers; however, a labor contract concluded subsequently shall not affect the performance of a labor contract concluded earlier.

Article 70 — The parties to part-time employment shall not agree on a probation period.

Article 71 — Either party to part-time employment may notify the other party at any time of the termination of the employment. Upon termination of the employment, the employer shall not pay economic compensation to the worker.

Article 72 — The hourly remuneration rate for part-time employment shall not be lower than the minimum hourly wage rate prescribed by the people's government of the place where the employer is located.

The settlement and payment cycle for labor remuneration in part-time employment shall not exceed 15 days.

Chapter VI — Supervision and Inspection

Article 73 — The labor administrative department of the State Council shall be responsible for the supervision and administration of the implementation of the labor contract system nationwide.

The labor administrative departments of local people's governments at or above the county level shall be responsible for the supervision and administration of the implementation of the labor contract system within their respective administrative regions.

In the supervision and administration of the implementation of the labor contract system, the labor administrative departments of people's governments at or above the county level shall hear the opinions of trade unions, enterprise-side representatives and relevant industry administrative departments.

Article 74 — The labor administrative departments of local people's governments at or above the county level shall, in accordance with the law, supervise and inspect the following aspects of the implementation of the labor contract system:

1. The formulation by employers of rules and regulations directly affecting the immediate interests of workers and the implementation thereof;
2. The conclusion and rescission of labor contracts between employers and workers;
3. Compliance by labor dispatch service providers and host entities with the relevant provisions on labor dispatch;
4. Compliance by employers with State provisions on working hours and rest and vacations of workers;
5. Payment by employers of labor remuneration as agreed in labor contracts and compliance with minimum wage standards;
6. Participation by employers in various types of social insurance and payment of social insurance premiums;
7. Other labor inspection matters prescribed by laws and regulations.

Article 75 — When conducting supervision and inspection, the labor administrative departments of local people's governments at or above the county level shall have the authority to inspect materials relating to

labor contracts and collective contracts and to conduct on-site inspections of labor premises, and both employers and workers shall truthfully provide relevant information and materials.

When conducting supervision and inspection, personnel of the labor administrative departments shall produce their credentials, exercise their powers in accordance with the law, and enforce the law in a civilized manner.

Article 76 — The relevant administrative departments of people's governments at or above the county level, such as those in charge of construction, health and work safety supervision and administration, shall, within the scope of their respective functions and duties, supervise and administer the implementation of the labor contract system by employers.

Article 77 — Where the lawful rights and interests of a worker are infringed upon, the worker shall have the right to request the relevant departments to handle the matter in accordance with the law, or to apply for arbitration or file a lawsuit in accordance with the law.

Article 78 — Trade unions shall safeguard the lawful rights and interests of workers in accordance with the law and shall supervise the performance of labor contracts and collective contracts by employers. Where an employer violates labor laws, regulations or labor contracts or collective contracts, the trade union shall have the right to raise opinions or request rectification; where a worker applies for arbitration or files a lawsuit, the trade union shall provide support and assistance in accordance with the law.

Article 79 — Any organization or individual shall have the right to report violations of this Law, and the labor administrative departments of people's governments at or above the county level shall promptly verify and handle such reports and reward those who have rendered meritorious service in reporting violations.

Chapter VII — Legal Liability

Article 80 — Where the rules and regulations of an employer that directly affect the immediate interests of workers violate the provisions of laws or regulations, the labor administrative department shall order rectification and issue a warning; where damage is caused to workers, the employer shall bear liability for compensation.

Article 81 — Where the text of a labor contract provided by an employer fails to contain the mandatory clauses of a labor contract as specified in this Law, or where the employer fails to deliver a copy of the labor contract text to the worker, the labor administrative department shall order rectification; where damage is caused to the worker, the employer shall bear liability for compensation.

Article 82 — Where an employer fails to conclude a written labor contract with a worker more than one month but less than one year after the date on which the worker commences work, it shall pay the worker twice the monthly wage.

Where an employer fails to conclude a non-fixed-term labor contract with a worker in violation of this Law, it shall pay the worker twice the monthly wage from the date on which a non-fixed-term labor contract should have been concluded.

Article 83 — Where an employer agrees on a probation period with a worker in violation of this Law, the labor administrative department shall order rectification; where the illegally agreed probation period has already been performed, the employer shall pay compensation to the worker based on the worker's monthly wage upon expiration of the probation period for the period of the probation period that has been performed in excess of the statutory probation period.

Article 84 — Where an employer, in violation of this Law, detains a worker's resident identity card or other certificates, the labor administrative department shall order the employer to return them to the worker within a prescribed time limit and shall impose penalties in accordance with the relevant legal provisions.

Where an employer, in violation of this Law, collects property from a worker by way of guarantee or under any other pretext, the labor administrative department shall order the employer to return the property to the worker within a prescribed time limit and shall impose a fine at the rate of not less than RMB 500 but not more than RMB 2,000 per person; where damage is caused to the worker, the employer shall bear liability for compensation.

Where a worker rescinds or terminates a labor contract in accordance with the law and the employer detains the worker's file or other articles, the employer shall be punished in accordance with the provisions of the preceding paragraph.

Article 85 — Where an employer falls under any of the following circumstances, the labor administrative department shall order the employer to pay labor remuneration, overtime pay or economic compensation within a prescribed time limit; where the labor remuneration is lower than the local minimum wage standard, the employer shall pay the shortfall; where the employer fails to pay within the prescribed time limit, the employer shall be ordered to pay additional compensation to the worker at the rate of not less than 50 percent but not more than 100 percent of the amount payable:

1. Failing to pay the worker's labor remuneration in full and on time in accordance with the labor contract or State provisions; 2. Paying the worker's wages below the local minimum wage standard; 3. Arranging overtime work without paying overtime pay; 4. Failing to pay economic compensation to the worker in accordance with this Law upon rescission or termination of the labor contract.

Article 86 — Where a labor contract is confirmed to be invalid in accordance with Article 26 of this Law and damage is caused to the other party, the party at fault shall bear liability for compensation.

Article 87 — Where an employer rescinds or terminates a labor contract in violation of this Law, it shall pay compensation to the worker at twice the rate of the economic compensation prescribed in Article 47 of this Law.

Article 88 — Where an employer falls under any of the following circumstances, administrative penalties shall be imposed in accordance with the law; where the act constitutes a crime, criminal liability shall be pursued in accordance with the law; where damage is caused to workers, the employer shall bear liability for compensation:

1. Forcing workers to work by means of violence, threats or illegal restriction of personal freedom; 2. Giving instructions in violation of regulations or compelling workers to undertake hazardous operations, endangering the personal safety of workers; 3. Humiliating, imposing corporal punishment on, beating, illegally searching, or detaining workers; 4. Causing serious damage to the physical and mental health of workers due to poor working conditions and serious environmental pollution.

Article 89 — Where an employer, in violation of this Law, fails to issue a written certificate of rescission or termination of a labor contract to a worker, the labor administrative department shall order rectification; where damage is caused to the worker, the employer shall bear liability for compensation.

Article 90 — Where a worker rescinds a labor contract in violation of this Law, or breaches the confidentiality obligation or non-competition provisions agreed upon in the labor contract, causing losses to the employer, the worker shall bear liability for compensation.

Article 91 — Where an employer recruits a worker whose labor contract with another employer has not yet been rescinded or terminated, causing losses to the other employer, it shall bear joint and several liability for compensation.

Article 92 — Where, in violation of this Law, a party conducts labor dispatch business without a license, the labor administrative department shall order cessation of the illegal activity, confiscate the illegal proceeds, and impose a fine of not less than one time but not more than five times the illegal proceeds; where there are no illegal proceeds, a fine of not more than RMB 50,000 may be imposed.

Where a labor dispatch service provider or host entity violates the provisions of this Law on labor dispatch, the labor administrative department shall order rectification within a prescribed time limit; where rectification is not made within the prescribed time limit, a fine at the rate of not less than RMB 5,000 but not more than RMB 10,000 per person shall be imposed, and the labor dispatch service provider's license to conduct labor dispatch business shall be revoked. Where the host entity causes damage to the dispatched workers, the labor dispatch service provider and the host entity shall bear joint and several liability for compensation.

Article 93 — Where an employer not qualified to operate lawfully commits illegal or criminal acts, it shall be pursued for legal liability in accordance with the law; where workers have already performed work, the employer or its investors shall pay labor remuneration, economic compensation and damages to the workers in accordance with the relevant provisions of this Law; where damage is caused to workers, it shall bear liability for compensation.

Article 94 — Where an individually contracted business operator recruits workers in violation of this Law and causes damage to the workers, the contracting organization and the individually contracted business operator shall bear joint and several liability for compensation.

Article 95 — Where labor administrative departments, other relevant administrative departments and their personnel neglect their duties, fail to perform their statutory duties, or exercise their powers in violation of the law, causing damage to workers or employers, they shall bear liability for compensation; the directly responsible persons in charge and other directly responsible persons shall be subject to administrative sanctions in accordance with the law; where the act constitutes a crime, criminal liability shall be pursued in accordance with the law.

Chapter VIII — Supplementary Provisions

Article 96 — Where laws, administrative regulations or the State Council provide otherwise for the conclusion, performance, modification, rescission or termination of labor contracts between public institutions and their staff employed under the appointment system, such provisions shall apply; where no such provisions exist, the relevant provisions of this Law shall apply.

Article 97 — Labor contracts lawfully concluded before the implementation of this Law and existing on the date of implementation of this Law shall continue to be performed; the number of consecutive conclusions of fixed-term labor contracts specified in Article 14(2)(3) of this Law shall be counted from the time of renewal of the fixed-term labor contract after the implementation of this Law.

Where a labor relationship has been established but a written labor contract has not yet been concluded before the implementation of this Law, a written labor contract shall be concluded within one month from the date of implementation of this Law.

Where a labor contract existing on the date of implementation of this Law is rescinded or terminated after the implementation of this Law, and economic compensation is required to be paid in accordance with Article 46 of this Law, the period for calculating economic compensation shall commence from the date of implementation of this Law; where, in accordance with the relevant provisions prevailing at the time before the implementation of this Law, the employer was required to pay economic compensation to the worker, such provisions shall apply.

Article 98 — This Law shall come into force on January 1, 2008.

This translation is provided for informational purposes only. For legal matters, please consult the original Chinese text or seek professional legal advice. For assistance with labor contract compliance, HR management, and employment law in China, please contact Dan Young Business Consultancy.