

Labor Dispute Mediation and Arbitration Law of the People’s Republic of China

Dan Young Business Consultancy — www.danyoungcpa.com
Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents	1
Chapter I — General Provisions	1
Chapter II — Mediation	2
Chapter III — Arbitration	3
Chapter IV — Supplementary Provisions	6

Adopted at the 31st Session of the Standing Committee of the Tenth National People’s Congress on December 29, 2007.

Table of Contents

- Chapter I — General Provisions
- Chapter II — Mediation
- Chapter III — Arbitration
- Chapter IV — Supplementary Provisions

Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of fairly and promptly resolving labor disputes, protecting the lawful rights and interests of the parties, and promoting harmonious and stable labor relations.

Article 2 — This Law shall apply to the following labor disputes arising between employers and workers within the territory of the People’s Republic of China:

1. Disputes arising from the confirmation of labor relations; 2. Disputes arising from the conclusion, performance, modification, rescission and termination of labor contracts; 3. Disputes arising from dismissal, discharge, resignation and departure; 4. Disputes arising from working hours, rest and vacations, social insurance, welfare benefits, training and labor protection; 5. Disputes arising from labor remuneration, work-related injury medical expenses, economic compensation or damages; 6. Other labor disputes prescribed by laws and regulations.

Article 3 — Labor disputes shall be resolved based on facts and in accordance with the principles of legality, fairness, timeliness and emphasis on mediation, and the lawful rights and interests of the parties shall be protected in accordance with the law.

Article 4 — Where a labor dispute arises, the worker may consult with the employer, or may invite the trade union or a third party to consult jointly with the employer to reach a settlement agreement.

Article 5 — Where a labor dispute arises and the parties are unwilling to consult, consultation fails, or a settlement agreement reached is not performed, the parties may apply to a mediation organization for mediation; where the parties are unwilling to mediate, mediation fails, or a mediation agreement reached is not performed, they may apply to a labor dispute arbitration committee for arbitration; where a party is dissatisfied with the arbitration award, it may file a lawsuit with a people's court, except as otherwise provided by this Law.

Article 6 — Where a labor dispute arises, the parties shall bear the responsibility of providing evidence in support of their own claims. Where evidence relating to the disputed matter is under the control of the employer, the employer shall provide such evidence; where the employer fails to provide it, it shall bear the adverse consequences.

Article 7 — Where there are ten or more workers on one side of a labor dispute with a common claim, they may elect representatives to participate in mediation, arbitration or litigation activities.

Article 8 — The labor administrative departments of people's governments at or above the county level shall, together with trade unions and enterprise-side representatives, establish a tripartite mechanism for coordinating labor relations and jointly study and resolve major labor dispute issues.

Article 9 — Where an employer, in violation of State provisions, defaults on or fails to pay labor remuneration in full, or defaults on work-related injury medical expenses, economic compensation or damages, the worker may file a complaint with the labor administrative department, and the labor administrative department shall handle the matter in accordance with the law.

Chapter II — Mediation

Article 10 — Labor dispute mediation organizations may be established in the following forms:

1. Enterprise labor dispute mediation committees; 2. Grassroots people's mediation organizations established in accordance with the law; 3. Labor dispute mediation organizations established in townships or sub-districts with labor dispute mediation functions.

An enterprise labor dispute mediation committee shall be composed of worker representatives and enterprise representatives. The worker representatives shall be appointed by the trade union or elected by all workers, and the enterprise representatives shall be designated by the person in charge of the enterprise. The chairperson of the enterprise labor dispute mediation committee shall be appointed by the trade union representative or by both parties through election.

Article 11 — Mediators of labor dispute mediation organizations shall be adult citizens who are fair and upright, maintain contact with the masses, are enthusiastic about mediation work, and possess certain legal knowledge, policy and cultural levels.

Article 12 — The parties may apply for labor dispute mediation in writing or orally. Where the application is made orally, the mediation organization shall record the basic information of the applicant, the disputed matter for which mediation is requested, the reasons and the time of application on the spot.

Article 13 — In mediating labor disputes, the facts shall be fully heard of both parties, and the parties shall be persuaded and guided by means such as patient reasoning and persuasion to help them reach an agreement voluntarily.

Article 14 — Where an agreement is reached through mediation, a mediation agreement shall be prepared. The mediation agreement shall be signed or sealed by both parties, and shall become effective after being signed by the mediator and affixed with the seal of the mediation organization, and shall be binding on both parties, who shall perform the agreement.

Where a mediation agreement is not performed within the agreed time limit by a party to a labor dispute regarding the payment of labor remuneration, work-related injury medical expenses, economic compensation or damages, the other party may apply to a people's court for a payment order in accordance with the law.

Article 15 — Where an agreement is not reached through mediation, either party may apply for arbitration in accordance with the law.

Article 16 — Where a mediation agreement is reached on payment obligations such as labor remuneration, work-related injury medical expenses, economic compensation or damages, and the employer fails to perform the agreement within the agreed time limit, the worker may apply to a people's court for a payment order by presenting the mediation agreement, and the people's court shall issue the payment order in accordance with the law.

Chapter III — Arbitration

Section 1 — General Provisions

Article 17 — Labor dispute arbitration committees shall be established in accordance with the principles of overall planning and planning, rational layout and meeting actual needs. The labor administrative departments of provinces and autonomous regions may provide guidance on the establishment of labor dispute arbitration committees in cities and counties.

Article 18 — The labor dispute arbitration committee shall be composed of representatives of the labor administrative department, trade unions and enterprise-side representatives. The number of members of the labor dispute arbitration committee shall be an odd number.

The labor dispute arbitration committee shall perform the following duties in accordance with the law:

1. Appointing and removing full-time or part-time arbitrators; 2. Accepting and handling labor dispute cases; 3. Discussing major or□□ (difficult and complex) labor dispute cases; 4. Supervising arbitration activities.

The labor dispute arbitration committee shall have an office responsible for handling its day-to-day work.

Article 19 — Labor dispute arbitration committees shall have a roster of arbitrators. An arbitrator shall be fair and upright and meet one of the following conditions:

1. Having served as a judge; 2. Having engaged in legal research or teaching work and possessing intermediate or higher professional titles; 3. Having legal knowledge and having engaged in human resources management, trade union work or other professional work for five years or more; 4. Being a practicing lawyer for three years or more.

Article 20 — Labor dispute arbitration committees shall select and appoint arbitrators from among those on the roster of arbitrators.

An arbitrator shall hear a labor dispute case in private or in a collegial panel. Where an arbitral tribunal is composed of three arbitrators, a chief arbitrator shall be designated.

Where a simple labor dispute case may be heard by a single arbitrator, the labor dispute arbitration committee shall designate one arbitrator to hear the case.

Article 21 — An arbitrator shall withdraw under any of the following circumstances, and the parties shall also have the right to apply for the withdrawal of an arbitrator orally or in writing:

1. Being a party to the case or a close relative of a party or agent; 2. Having an interest in the case; 3. Having other relationships with a party or agent to the case that may affect fair adjudication; 4. Privately meeting with a party or agent, or accepting invitations or gifts from a party or agent.

Where a party applies for withdrawal, reasons shall be stated and the application shall be made before the hearing begins; where the ground for withdrawal becomes known after the hearing begins, the application may be made before the conclusion of the hearing.

Section 2 — Application and Acceptance

Article 22 — The party applying for arbitration shall submit an arbitration application and shall submit copies according to the number of respondents.

Where it is genuinely difficult for the applicant to prepare a written arbitration application, the application may be made orally, and the arbitration committee shall record it and notify the other party.

Article 23 — An arbitration application shall contain the following particulars:

1. The name, gender, age, occupation, work unit and address of the worker, and the name and address of the employer, and the name and position of the legal representative or principal responsible person; 2. The arbitration claims and the facts and reasons on which they are based; 3. Evidence and sources of evidence, and the names and addresses of witnesses.

Article 24 — Upon receipt of an arbitration application, the labor dispute arbitration committee shall examine the application and decide whether to accept it within five days. Where the application is accepted, the committee shall serve a copy of the arbitration application on the respondent within five days.

Where the labor dispute arbitration committee decides not to accept the application or fails to issue a decision within the time limit, the applicant may file a lawsuit with a people's court in respect of the labor dispute.

Article 25 — After receipt of a copy of the arbitration application, the respondent shall submit a statement of defense to the labor dispute arbitration committee within ten days. The labor dispute arbitration committee shall, within five days of receipt of the statement of defense, serve a copy of the statement of defense on the applicant. Failure by the respondent to submit a statement of defense shall not affect the conduct of the arbitration proceedings.

Article 26 — The statute of limitations for labor dispute arbitration shall be one year. The statute of limitations shall be calculated from the date on which the party knew or should have known that its rights had been infringed.

The statute of limitations for labor dispute arbitration shall be interrupted where a party claims its rights against the other party, or requests remedy from the relevant department, or the other party agrees to perform its obligations. The statute of limitations shall be recalculated from the time of interruption. Where a party is unable to apply for arbitration within the statute of limitations due to force majeure or other legitimate reasons, the statute of limitations shall be suspended. The statute of limitations shall continue to run from the date on which the cause of suspension is eliminated.

Where a dispute arises during the existence of a labor relationship concerning the default of payment of labor remuneration, the statute of limitations shall not apply during the existence of the labor relationship; however, the statute of limitations shall be one year from the date of termination of the labor relationship.

Article 27 — The labor dispute arbitration committee shall not charge fees.

The funding for labor dispute arbitration shall be guaranteed by the finance department.

Section 3 — Hearing and Award

Article 28 — Where an applicant has justifiable reasons for not appearing at the hearing, it may request a postponement of the hearing three days before the hearing, and the□□□ (arbitral tribunal) shall decide whether to approve the postponement.

Where the applicant withdraws the arbitration application and the arbitral tribunal approves the withdrawal, or where the hearing cannot proceed due to the applicant's failure to appear at the hearing, the applicant may apply for arbitration again.

Article 29 — Where the hearing cannot proceed due to the respondent's failure to appear at the hearing without justifiable reasons or its departure from the hearing without the permission of the arbitral tribunal, a default award may be rendered.

Article 30 — In arbitration activities, the arbitral tribunal shall hear the statements and arguments of both parties, and the parties shall have the right to cross-examine evidence, debate, and present their final opinions.

Article 31 — The arbitral tribunal shall record the hearing proceedings in a transcript. Where the parties or other arbitration participants consider that there are omissions or errors in the record of their statements, they shall have the right to request supplementation or correction. The transcript shall be signed or sealed by the arbitrators, recorder, parties and other arbitration participants.

Article 32 — The parties shall provide evidence in support of their claims. The arbitral tribunal may, based on the needs of hearing the case, require the parties to supplement evidence within a specified time limit.

Article 33 — The arbitral tribunal may investigate and collect evidence on its own initiative when it deems it necessary.

Article 34 — For specialized issues that require appraisal, the parties may agree on an appraisal institution; where the parties fail to agree, the arbitral tribunal shall designate an appraisal institution. The appraisal institution shall issue an appraisal opinion.

Article 35 — Evidence shall be presented at the hearing and cross-examined by the parties.

Article 36 — Where evidence is under the control of the employer, the employer shall provide it within a specified time limit. Where the employer fails to provide it within the specified time limit, it shall bear the adverse consequences.

Article 37 — The arbitral tribunal shall conduct mediation before rendering an award. Where an agreement is reached through mediation, the arbitral tribunal shall prepare a mediation statement. The mediation statement shall expressly state the arbitration claims and the outcome of the agreement between the parties. The mediation statement shall be signed by the arbitrators and affixed with the seal of the labor dispute arbitration committee, and shall be served on both parties. The mediation statement shall become legally effective upon signature and acceptance by both parties.

Where mediation fails or the mediation statement is not accepted before service, the arbitral tribunal shall render an award in a timely manner.

Article 38 — The arbitration award shall be rendered within 45 days from the date of acceptance of the arbitration application by the labor dispute arbitration committee. Where the case is complex and requires an extension, the time limit may be extended by 15 days with the approval of the chairperson of the labor dispute arbitration committee. Where the time limit is extended, the parties shall be notified in writing.

Article 39 — The arbitral tribunal shall render an award in accordance with the majority opinion of the arbitrators, and the dissenting opinion of the□□□□ (minority arbitrator) shall be recorded in the transcript. Where the arbitral tribunal is unable to form a majority opinion, the award shall be rendered in accordance with the opinion of the chief arbitrator.

Article 40 — The award shall expressly state the arbitration claims, the facts in dispute, the reasons for the award, the outcome of the award and the date of the award. The award shall be signed by the arbitrators and affixed with the seal of the labor dispute arbitration committee. Arbitrators holding dissenting opinions on the award may sign or not sign.

Article 41 — In respect of the following labor disputes, the arbitration award shall be final and the award shall become legally effective upon service, except as otherwise provided by this Law:

1. Disputes concerning the recovery of labor remuneration, work-related injury medical expenses, economic compensation or damages in an amount not exceeding the local monthly minimum wage standard over 12 months; 2. Disputes arising from the implementation of State labor standards concerning working hours, rest and vacations, social insurance, etc.

Where a worker is dissatisfied with the arbitration award referred to in the preceding paragraph, it may file a lawsuit with a people's court within 15 days from the date of receipt of the award. Where an employer is dissatisfied with the arbitration award referred to in the preceding paragraph, it may, within 30 days from the date of receipt of the award, apply to the intermediate people's court at the place where the labor dispute arbitration committee is located for revocation of the award.

Article 42 — Where a party is dissatisfied with an arbitration award other than those specified in Article 41 of this Law, it may file a lawsuit with a people's court within 15 days from the date of receipt of the award; where a lawsuit is not filed within the time limit, the award shall become legally effective.

Article 43 — Where a party fails to perform an award, mediation statement or settlement agreement that has become legally effective within the prescribed time limit, the other party may apply to a people's court for enforcement in accordance with the relevant provisions of the Civil Procedure Law.

Chapter IV — Supplementary Provisions

Article 44 — Labor dispute arbitration in public institutions that implement the appointment system shall be governed by this Law, unless otherwise provided by laws, administrative regulations or the State Council.

Article 45 — The arbitration rules for labor dispute arbitration committees shall be formulated by the social insurance administrative department of the State Council in conjunction with other relevant departments.

Article 46 — The time limits for arbitration as prescribed in this Law shall be calculated from the day following the date of service or acceptance of the relevant legal document. Where the last day of a time limit falls on a statutory holiday, the first working day after the holiday shall be the expiration date of the time limit.

Article 47 — The expenses of witnesses, forensic examiners, etc. who participate in arbitration activities shall be borne by the party calling the witness or the party requesting the forensic examination.

Article 48 — This Law shall not apply to labor dispute arbitration between public servants and their employer institutions.

Article 49 — Mediation and arbitration of labor disputes that occur in rural areas may be handled by reference to this Law.

Article 50 — Where, in the course of arbitration, a party applies for property preservation, the arbitration committee shall transfer the application to the people's court.

Article 51 — The arbitration of collective contract disputes shall be governed by the Labor Law and the Labor Contract Law of the People's Republic of China.

Article 52 — The arbitration of labor disputes occurring between a worker and an employer recruited by a labor dispatch service provider shall be governed by this Law.

Article 53 — This Law shall come into force on May 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 dispute resolution, arbitration proceedings, and employment law compliance in China, please contact Dan Young Business Consultancy.