

Regulation on the Implementation of the Labor Contract Law of the People’s Republic of China

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Chapter I — General Provisions

Article 1 — This Regulation is formulated for the purposes of implementing the Labor Contract Law of the People’s Republic of China.

Article 2 — The people’s governments at all levels and the labor administrative departments of people’s governments at or above the county level, as well as trade unions and other organizations, shall take measures to promote the implementation of the Labor Contract Law and develop harmonious and stable labor relations.

Article 3 — Entities such as partnerships and foundations established in accordance with the law that have obtained business licenses or registration certificates are employers as referred to in the Labor Contract Law.

Chapter II — Conclusion of Labor Contracts

Article 4 — Where a branch office established by an employer as referred to in the Labor Contract Law has obtained a business license or registration certificate in accordance with the law, it may conclude labor contracts with workers as an employer; where it has not obtained a business license or registration certificate in accordance with the law, it may conclude labor contracts with workers only with the mandate of the employer.

Article 5 — Where a worker fails to conclude a written labor contract with the employer within one month from the date of commencement of work as notified by the employer, the employer shall notify the worker in writing of the termination of the labor relationship and shall not be required to pay economic compensation to the worker, but shall pay the worker the labor remuneration for the actual days worked in accordance with the law.

Article 6 — Where an employer fails to conclude a written labor contract with a worker more than one month but less than one year from the date of commencement of work, it shall pay the worker twice the monthly wage in accordance with Article 82 of the Labor Contract Law, and shall conclude a written labor contract with the worker to make up for the deficiency. Where the worker fails to conclude a written labor contract with the employer, the employer shall notify the worker in writing of the termination of the labor relationship and shall pay economic compensation in accordance with Article 47 of the Labor Contract Law.

Article 7 — Where an employer fails to conclude a written labor contract with a worker within one year from the date of commencement of work, it shall pay twice the monthly wage to the worker for the period from the day after the expiration of one month to the day before the expiration of one year in accordance with Article 82 of the Labor Contract Law, and shall be deemed to have concluded a non-fixed-term labor contract with the worker on the date of expiration of one year, and shall immediately conclude a written labor contract with the worker to make up for the deficiency.

Article 8 — The employee roster specified in Article 7 of the Labor Contract Law shall include the names, genders, citizen identity numbers, household registration addresses, current addresses, contact information, forms of employment, starting dates of employment, and contract terms of the employees.

Article 9 — The “ten consecutive years of continuous work” specified in Article 14(2) of the Labor Contract Law shall be calculated from the date of commencement of work with the employer, including the period before the implementation of the Labor Contract Law.

Where a worker is transferred from the original employer to a new employer not due to his own reasons, his years of work with the original employer shall be combined to calculate the period of work with the new employer. Where the original employer has paid economic compensation, the period of work with the new employer shall be recalculated.

Article 10 — Where a worker is not due to his own reasons transferred from the original employer to a new employer, the period of continuous work shall include his years of work with the original employer.

Article 11 — Unless the worker and the employer reach an agreement through consultation on the specific content of a non-fixed-term labor contract, the parties shall, in accordance with the principles of fairness and reasonableness and with reference to the provisions of the collective contract, determine the content of the non-fixed-term labor contract.

Article 12 — The special training expenses specified in Article 22 of the Labor Contract Law include the training fees paid by the employer for the specialized technical training of the worker, the travel and transportation expenses during the training period, and other direct expenses incurred as a result of the training.

Article 13 — Where a worker falls under any of the circumstances specified in Article 44 of the Labor Contract Law and the labor contract is terminated, the non-competition agreement shall be performed in accordance with the provisions of Articles 23 and 24 of the Labor Contract Law.

Article 14 — The place of performance of a labor contract shall be the actual place of work of the worker. Where the employer dispatches the worker to work at a place other than the registered address, the place of work of the worker shall be the place of performance.

Article 15 — Regarding the “probation period wage” specified in Article 20 of the Labor Contract Law, where the minimum wage for the same position in the employer has not been stipulated in the labor contract or the collective contract, the principle of equal pay for equal work shall apply, and the wage shall not be lower than 80 percent of the wage for the same position.

Chapter III — Rescission and Termination of Labor Contracts

Article 16 — Where an employer, in order to recruit a worker, provides the worker with such benefits as vehicle and housing, the severance shall be handled by the two parties through consultation; where consultation fails, the parties may resolve the matter through litigation or other means.

Article 17 — Where an employer and a worker agree on a service period in accordance with Article 22 of the Labor Contract Law, this shall not affect the normal wage adjustment during the service period.

Article 18 — Under any of the following circumstances, in accordance with the conditions, procedures and obligations for rescission of a fixed-term labor contract or non-fixed-term labor contract as stipulated in the Labor Contract Law, the employer or the worker may rescind a labor contract with a term based on the completion of a specific task:

1. The employer and the worker reach an agreement through consultation; 2. The worker falls under the circumstances specified in Article 38 of the Labor Contract Law; 3. The employer falls under the circumstances specified in Article 39 of the Labor Contract Law; 4. The worker falls under the circumstances specified in Article 40(1) or (2) of the Labor Contract Law; 5. The employer falls under the circumstances specified in Articles 41(1)(1) to (3) of the Labor Contract Law.

Article 19 — For the purposes of Articles 40, 41 and 42 of the Labor Contract Law, the medical treatment period shall be determined in accordance with the relevant provisions of the State on the medical treatment period for enterprise employees.

Article 20 — The “leaving the work position” specified in Article 42 of the Labor Contract Law shall be determined based on the actual circumstances; where the employer is not dissolved but the worker leaves the work position, the medical treatment period shall be calculated separately.

Article 21 — Where a worker who has been diagnosed with an occupational disease or is a suspected occupational disease patient requires diagnosis or medical observation, the employer shall not rescind the labor contract.

Article 22 — Where a worker retires in accordance with the law, a labor contract relationship shall not be established between the worker and the employer.

Article 23 — Where a worker dies or is declared dead or missing by a people’s court, the employer may terminate the labor contract, provided that the relevant formalities shall be completed in accordance with the law.

Article 24 — Where an employer issues a certificate of rescission or termination of the labor contract, it shall expressly state the term of the labor contract, the date of rescission or termination, the work position held, and the years of work with the employer.

Article 25 — Where an employer rescinds or terminates a labor contract in violation of the Labor Contract Law and pays compensation in accordance with Article 87 of the Labor Contract Law, it shall not pay economic compensation. The period for calculating the compensation shall be calculated from the date of commencement of work with the employer.

Article 26 — The economic compensation paid by an employer to a worker shall be calculated based on the worker's wages for the 12 months preceding the rescission or termination of the labor contract. Among them, the calculation base for the monthly wage includes hourly wages, piece-rate wages, bonuses, allowances and subsidies, overtime pay, and wages paid under special circumstances.

Where the worker's average wage for the 12 months preceding the rescission or termination of the labor contract is lower than the local minimum wage standard, the calculation shall be based on the local minimum wage standard. Where the worker has worked for less than 12 months, the calculation shall be based on the average wage for the actual months worked.

Article 27 — The economic compensation month wage standard specified in Article 47 of the Labor Contract Law refers to the wages payable to the worker, including hourly wages or piece-rate wages as well as monetary income such as bonuses, allowances and subsidies.

Article 28 — Where a worker has worked across regions with the same employer, the economic compensation shall be calculated based on the standards of the place where the employer is registered; where the registered address of the employer is inconsistent with the actual place of work, the matter shall be handled in accordance with the relevant provisions of the Labor Contract Law.

Chapter IV — Special Provisions on Labor Dispatch

Article 29 — An employer shall not establish a labor dispatch service provider to dispatch workers to itself or its affiliated entities.

Article 30 — The employing unit shall not dismantle the positions of its own employees and provide them in the form of labor dispatch services through dispatched workers.

Article 31 — Where a labor dispatch service provider dispatches workers, the number of dispatched workers shall not exceed the proportion prescribed by the labor administrative department of the State Council.

Article 32 — Where a dispatched worker suffers a work-related injury, the labor dispatch service provider shall apply for work-related injury recognition in accordance with the law, and the host entity shall provide assistance. The labor dispatch service provider shall bear the work-related injury insurance liability, but may agree with the host entity on compensation measures.

Chapter V — Legal Liability

Article 33 — Where an employer violates the provisions of the Labor Contract Law on the establishment of a roster of employees, the labor administrative department shall order the employer to make corrections within a specified time limit.

Article 34 — Where an employer fails to pay twice the monthly wage or compensation to a worker in accordance with the provisions of the Labor Contract Law, the labor administrative department shall order the employer to make corrections within a specified time limit and may order the employer to pay additional compensation.

Article 35 — Where a labor dispatch service provider violates the provisions of the Labor Contract Law and this Regulation, the labor administrative department and other relevant departments shall order it to make corrections; where the circumstances are serious, a fine shall be imposed, and the labor dispatch business license may be revoked.

Chapter VI — Supplementary Provisions

Article 36 — From the date of implementation of this Regulation, the Measures for Economic Compensation for Violation and Rescission of Labor Contracts shall be repealed simultaneously.

Article 37 — Where the relevant provisions of this Regulation are inconsistent with the provisions of the Labor Contract Law, the provisions of the Labor Contract Law shall apply.

Article 38 — This Regulation shall come into force on September 18, 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.