

Regulations on the Supervision of Labor Security of the PRC

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

Contents

Table of Contents	1
Chapter I — General Provisions	1
Chapter II — Duties of Labor Security Administrative Departments	2
Chapter III — Procedures for Labor Security Supervision	3
Chapter IV — Legal Liability	4
Chapter V — Supplementary Provisions	5

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Table of Contents

- Chapter I — General Provisions
- Chapter II — Duties of Labor Security Administrative Departments
- Chapter III — Procedures for Labor Security Supervision
- Chapter IV — Legal Liability
- Chapter V — Supplementary Provisions

Chapter I — General Provisions

Article 1 — These Regulations are formulated in accordance with the Labor Law of the People's Republic of China and other relevant laws for the purposes of regulating labor security supervision, safeguarding the lawful rights and interests of workers, and promoting economic development and social stability.

Article 2 — These Regulations shall apply to the labor security supervision conducted by the labor security administrative departments of the people's governments at or above the county level over enterprises and self-employed industrial and commercial households (hereinafter referred to as "employers").

These Regulations shall also apply to the labor security supervision conducted over occupational intermediary institutions, vocational skills training institutions, and vocational skills examination and appraisal institutions.

These Regulations shall apply, *mutatis mutandis*, to the labor security supervision conducted by labor security administrative departments over state organs, public institutions, and social organizations in respect of their compliance with labor security laws and regulations.

Article 3 — The labor security administrative department of the State Council shall be responsible for labor security supervision nationwide. The labor security administrative departments of local people's governments at or above the county level shall be responsible for labor security supervision within their respective administrative areas.

The labor security administrative departments of the people's governments at or above the county level may, where necessary, entrust labor security supervision organizations that meet the requirements for supervision and law enforcement with the implementation of labor security supervision.

Article 4 — Labor security supervision shall adhere to the principles of fairness, openness, and efficiency, and shall combine education with punishment in the implementation of labor security supervision.

Article 5 — Local people's governments at or above the county level shall strengthen labor security supervision. Trade unions, communist youth league organizations, women's federations, disabled persons' federations, and other organizations shall safeguard the lawful rights and interests of workers in accordance with the law.

Article 6 — Employers shall abide by labor security laws, regulations, and rules, and shall accept and cooperate with labor security supervision. No unit or individual may obstruct labor security supervision conducted in accordance with the law.

All units and individuals shall have the right to report any violation of labor security laws, regulations, or rules to the labor security administrative departments.

Chapter II — Duties of Labor Security Administrative Departments

Article 7 — The labor security administrative departments shall exercise labor security supervision over employers in respect of the following matters:

- (1) the formulation of internal labor security rules and regulations by employers;
- (2) the conclusion of employment contracts between employers and workers;
- (3) compliance by employers with the provisions prohibiting the use of child labor;
- (4) compliance by employers with the provisions on special labor protection for female employees and juvenile workers;
- (5) compliance by employers with the provisions on working hours, rest, and leave;
- (6) the payment of wages by employers to workers and the implementation of minimum wage standards;
- (7) the participation of employers in various social insurance schemes and the payment of social insurance premiums;
- (8) compliance by occupational intermediary institutions, vocational skills training institutions, and vocational skills examination and appraisal institutions with the relevant State provisions;
- (9) other labor security supervision matters provided for by laws and regulations.

Article 8 — In implementing labor security supervision, the labor security administrative departments shall have the power to take the following investigation and inspection measures:

- (1) entering the workplace of an employer for inspection;
- (2) inquiring with relevant personnel in respect of matters under investigation;
- (3) requiring the employer to provide documents and materials relating to the matters under investigation and making inquiries in respect thereof;

(4) adopting such means as recording, video recording, photographing, and duplicating for the collection of relevant information and materials; and

(5) entrusting an accounting firm to audit the employer's payment of wages and social insurance premiums.

Article 9 — When implementing labor security supervision, labor security supervision officers shall have the relevant professional knowledge and service experience, pass the assessment, and obtain the labor security supervision certificate.

Article 10 — In performing their duties, labor security supervision officers shall have the right to enter the relevant premises for investigation according to law, consult the relevant documents and materials, and inquire of the relevant persons.

Labor security supervision officers shall not divulge commercial secrets learned in the course of performing their duties, and shall keep confidential the relevant information of informants.

Article 11 — The labor security administrative departments shall exercise supervision over the following matters by way of daily patrol inspections, examination of materials submitted by employers in accordance with the requirements, and special inspections:

- (1) employers' compliance with the provisions on the recruitment and employment of workers;
- (2) the conclusion and performance of employment contracts;
- (3) compliance with the provisions on working hours, rest, and leave;
- (4) payment of wages and labor remuneration;
- (5) participation in social insurance and payment of social insurance premiums; and
- (6) other matters provided for by laws and regulations.

Chapter III — Procedures for Labor Security Supervision

Article 12 — Labor security supervision conducted by the labor security administrative departments shall comply with the following provisions:

- (1) when conducting labor security supervision, there shall be not fewer than two labor security supervision officers, who shall produce their labor security supervision certificates;
- (2) upon completion of the investigation, a record of the investigation shall be prepared on the spot and signed by the labor security supervision officers and the parties concerned; where the parties refuse to sign, this shall be noted by the labor security supervision officers; and
- (3) where any employer is found to have violated labor security laws, regulations, or rules, the matter shall be handled in accordance with the provisions of these Regulations.

Article 13 — Upon discovering any violation of labor security laws, regulations, or rules by an employer, the labor security administrative department shall file a case for investigation within seven working days. Where the facts are clear and the evidence is conclusive, the labor security administrative department shall order the employer to make corrections within a prescribed time limit or make an administrative handling decision in accordance with the law.

Article 14 — Where an employer commits any of the following acts, the labor security administrative department shall order it to make corrections within a prescribed time limit, and may impose a fine in accordance with the law where the circumstances are serious:

- (1) refusing to accept or cooperate with labor security supervision;

- (2) refusing to provide or falsely providing the documents and materials required for labor security supervision;
- (3) concealing the truth, fabricating evidence, concealing or destroying evidence; or
- (4) obstructing labor security supervision officers from performing their duties according to law.

Article 15 — Where, during labor security supervision, the labor security administrative department discovers that the employer's illegal act should be handled by another administrative department, it shall promptly transfer the case to the relevant department; and where a crime is suspected, it shall transfer the case to the judicial authorities in accordance with the law.

Article 16 — Where an employer has any objection to the administrative handling decision of the labor security administrative department, it may apply for administrative reconsideration or institute an administrative lawsuit in accordance with the law.

Chapter IV — Legal Liability

Article 17 — Where an employer has any of the following acts, the labor security administrative department shall order it to make corrections within a prescribed time limit, and may impose a fine of not less than RMB 2,000 yuan but not more than RMB 20,000 yuan:

- (1) refusing to accept or cooperate with labor security supervision;
- (2) refusing to provide or falsely providing the documents and materials required for labor security supervision; or
- (3) obstructing labor security supervision conducted in accordance with the law by means that do not constitute a crime.

Article 18 — Where an employer violates the provisions on the protection of the lawful rights and interests of workers and commits any of the following acts, the labor security administrative department shall order it to pay the workers their wages and remuneration, or to make up the shortfall, and may order it to pay additional compensation to the workers in accordance with the provisions:

- (1) deducting wages from workers without cause or delaying the payment of wages to workers without cause;
- (2) paying wages to workers at a rate lower than the local minimum wage standard;
- (3) failing to pay overtime wages for extended working hours; or
- (4) failing to pay economic compensation to workers upon dissolution or termination of employment contracts in accordance with the provisions.

Article 19 — Where an employer fails to pay social insurance premiums in accordance with the provisions, the labor security administrative department shall order it to make corrections within a prescribed time limit; and where it fails to make corrections within the prescribed time limit, a fine shall be imposed in accordance with the law.

Article 20 — Where an employer has any of the following acts, the labor security administrative department shall order it to make corrections within a prescribed time limit, and shall impose a fine in accordance with the provisions of the State Council on the administration of labor security supervision:

- (1) illegally recruiting minors under the age of 16;
- (2) violating the provisions on special labor protection for female employees or juvenile workers;
- (3) forcing workers to work by means of violence, threat, or illegal restriction of personal freedom; or

(4) insulting, corporally punishing, beating, illegally searching, or detaining workers.

Article 21 — Where an employer fails to conclude an employment contract with a worker in accordance with the law, the labor security administrative department shall order it to make corrections.

Article 22 — Where a labor security supervision officer abuses his or her power, neglects his or her duty, engages in malpractice for personal gain, or divulges trade secrets or relevant information of informants learned in the course of performing duties, disciplinary action shall be taken in accordance with the law; and where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 23 — Where the labor security administrative department or a labor security supervision officer illegally exercises its or his or her powers and infringes upon the lawful rights and interests of an employer or a worker, it or he or she shall be liable for compensation in accordance with the law; and administrative liability shall be pursued against the directly responsible persons in charge and other directly responsible persons in accordance with the law.

Chapter V — Supplementary Provisions

Article 24 — Any employer or individual that has objections to the labor security supervision conducted by the labor security administrative department may lodge a complaint with the labor security administrative department or the people's government at a higher level, or apply for administrative reconsideration or institute an administrative lawsuit in accordance with the law.

Article 25 — Employers shall establish and maintain employment records. The employment records shall include basic information on the workers, the duration of the employment contracts, the payment of wages and social insurance premiums, and other such information. The employment records shall be kept for not less than two years after the termination of the employment relationship.

Article 26 — The labor security administrative departments shall establish a credibility archive for employers' compliance with labor security laws and regulations. Where an employer has a major violation of labor security laws and regulations, the labor security administrative department may make such violation public to the society through the media and other means.

Article 27 — This Regulation shall come into force on December 1, 2004.

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