



## **Direito do Trabalho na República Popular da China**

Labour Law of the People's Republic of China

Chinese Law

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中华人民共和国劳动法

Adopted at the 28th Session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on June 29, 2007 and shall enter into force as of January 1, 2008

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### **Chapter I General Rules**

**Article 1** This Law is enacted and formulated in order to improve the labour contract system, specify the rights and obligations of both parties to the labour contracts, protect the legitimate rights and interests of the workers and construct and develop a harmonious and steady employment relationship.

**Article 2** The establishment of employment relationship between enterprises, individual economic organizations, non-enterprise private entities and other entities (hereinafter referred to as the employers) and the workers thereof, as well as the conclusion,



performance, alteration, cancellation or termination of labour contracts shall be governed by this Law.

This Law shall also apply to the state organs, public institutions, social organizations and workers bound up by labour contracts concerning the conclusion, performance, alteration, cancellation or termination of labour contracts.

**Article 3** The conclusion of a labour contract shall be subject to the principle of legitimacy, justice, equality, free will, reaching consensus by consultation and good faith.

The labour contracts legally concluded shall have binding force. The obligations as agreed therein shall be observed by employers and workers.

**Article 4** Employers shall establish and perfect labour bylaws so as to ensure that workers can enjoy labour rights and perform labour obligations.

Where employers constitute, modify or determine such bylaws or significant matters in direct relation to the real benefits of workers as the remuneration, working time, rest and vacation, work safety and health care, social insurance and welfare, job training, job discipline or quota management, the draft thereof shall be discussed at the workers' congress or by all the workers, which shall bring forward schemes and opinions. The aforesaid bylaws and significant matters shall be determined after equal consultation by employers and labour union or representatives of workers.

During the process of the implementation of the aforesaid bylaws and significant matters, the labour union or the workers is/are entitled to require the employer to modify or improve them by consultations if it/they find them improper.

The employers shall publicize the bylaws and significant matters in direct relation to the real benefits of the workers or inform the workers.

**Article 5** The labour administrative department of the people's government above the county level shall, in collaboration with workers' congresses and the representatives from enterprises, establish and perfect a three-party mechanism for coordinating labour relationship and shall jointly research relevant major issues with respect to labour relationship.

**Article 6** The labour union shall assist and direct the workers to conclude and perform labour contracts with the employers and establish a collective negotiation mechanism with employers in order to safeguard the legitimate rights and interests of the workers.

## **Chapter II Conclusion of labour Contracts**

**Article 7** An employer establishes labour relationship with a worker as of the date of using the worker. It shall set up a roll of workers for reference.

**Article 8** When hiring the workers, the employer shall faithfully notify them of the job contents, conditions and place, occupational harm, work safety status, remuneration and



other information as required by the workers. The employer is entitled to be aware of the basic information of the workers in direct relation to the labour contracts, and the workers shall provide such information authentically.

**Article 9** Where a worker is hired, the employer may not detain the identity card or other certificates thereof, nor may it require a guaranty or collect property from the worker under any other reason.

**Article 10** To establish a labour relationship, parties shall conclude a labour contract in written form.

Where a labour relationship has already been established without concluding a labour contract in written form at the same time, parties shall conclude a labour contract in written form within one month as of the date of using the worker.

Where a labour contract is concluded by an employer and a worker before the employment, the labour relationship is established as of the date of using the worker.

**Article 11** Where any employer fails to conclude a labour contract in written form without specific remuneration stipulated thereof when it starts to use a worker, the remuneration to the new worker shall be consistent with the provisions of the collective contract. If there is no collective contract or such stipulation in the collective contract, it shall follow the principle of equal pay for equal work.

**Article 12** labour contracts are classified into labour contracts with a fixed period, labour contracts without a fixed period and labour contracts with a period to complete the prescribed work.

**Article 13** labour contracts with a fixed period are the labour contracts in which the termination time of the contracts has been stipulated by the employers and workers.

Employers and workers may conclude labour contracts with a fixed period upon consultation.

**Article 14** labour contracts without a fixed period are the labour contracts in which no certain termination time of the contract is stipulated by the employers and workers.

Employers and workers may conclude labour contracts without a fixed period upon consensus by consultation. In the case of any of the following circumstances, if the worker proposes or agrees to renew or conclude a labour contract, a labour contract without a fixed period shall be concluded except that the worker proposes to conclude a labour contract with a fixed period:

- (1) The worker has worked for an uninterrupted term of 10 years for the employer;
- (2) The worker has worked for an uninterrupted term of 10 years for the employer and he reaches the age which is less than 10 years up to the statutory retirement age when the



employer initially performs the labour contract system or when a restructuring state-owned enterprise re-concludes the labour contract; or

(3) The labour contract is to be renewed after the labour contract with a fixed period has been concluded twice continuously, and the worker is not under any of the circumstances as prescribed in Article 39 and Subparagraphs (1) and (2) of Article 40 in this Law.

In case any employer fails to sign a labour contract in written form with a worker after one year as of the date of using him, it shall be regarded that the employer and the worker has concluded a labour contract without a fixed period.

**Article 15** labour contracts with a period to complete the prescribed work are the labour contracts in which the period of the contract shall be stipulated upon the completion of the prescribed work by the employers and workers.

Employers and workers may conclude labour contracts with a period to complete the prescribed work upon consensus by consultation.

**Article 16** A labour contract shall be concluded upon consensus by consultation of the employer and the employee, and it shall become effective upon the signatures or seals on the text of the labour contract by the employer and the worker.

The employer and the worker shall hold one copy of the text of the labour contract respectively.

**Article 17** A labour contract shall contain the clauses as follows:

- (1) The employer'S name, residence and legal representative or major principal;
- (2) The worker'S name, residence and number of identity card or any other valid identity certificate;
- (3) The time limit for the labour contract;
- (4) The work contents and place;
- (5) The work time, rest and vocation;
- (6) The remunerations;
- (7) The social security;
- (8) The labour protection, work conditions and protection against and prevention of occupational harm; and
- (9) Other matters that shall be incorporated in the labour contract according to any law or regulation.

Except for the essential clauses as specified in the preceding paragraph, the probation period, training, confidentiality, supplementary insurances, fringe benefit as well as other



items may be stipulated in the labour contract by the employer and the worker upon consensus.

**Article 18** In the case of any dispute due to any unspecified remunerations, work conditions and other criterions in the labour contracts, employers and workers may have another negotiation. If there is no agreement upon the negotiations, the provisions of the collective contracts shall be observed. If there is no collective contract or no such stipulation relating to the remuneration, the principle of equal pay for equal work shall be followed. If there is no collective contract or such stipulation concerning the work conditions and other criterions in the collective contract, the relevant provisions of the state shall be abided by.

**Article 19** Where the term of a labour contract is above three months but less than one year, the probation period thereof shall not be more than one month. Where the term of a labour contract is above one year but less than three years, the probation period thereof shall be less than two months. With respect to a labour contract with a fixed period of above three years or without a fixed period, the probation period thereof shall not be in excess of six months.

An employer can only stipulate one probation period with a same worker.

No probation period may be stipulated in a labour contract with a period to complete the prescribed work or a labour contract with a fixed period of less than three months.

The probation period shall be contained in the term of labour contracts. If only the probation period is stipulated in a labour contract, it shall be untenable and the said period shall be the term of the labour contract.

**Article 20** During the probation period, the salary of a worker shall not be lower than the minimum salary for the same post of the same employer or not lower than 80 percent of the wage as stipulated in the labour contract, nor may it be lower than the minimum wage of the locality where the entity is situated.

**Article 21** During the probation period, unless the worker is under any of the circumstances as prescribed in Article 39 and Subparagraphs (1) and (2) of Article 40 of this Law, the employer shall not terminate the labour contract. If the employer terminates the labour contract during the probation period, it shall make an explanation to the worker.

**Article 22** Where an employer pays special training expenses exclusively for a worker for special technical training, it may conclude an agreement with the worker concerning the service period.

Where any worker is in violation of the service period stipulation, he shall pay the employer a penalty for breach of contract as stipulated. The amount of penalty for breach of contract shall not be in excess of the training fees as provided by the employer. The



penalty for breach of contract that the worker pays as required by the employer shall be no more than the training expenses amortized in the service period unperformed.

In the case of any stipulated service period between the employer and the worker, it shall not influence the increase of the remuneration of the worker during the service period under the normal wage adjustment mechanism.

**Article 23** Employers and workers may stipulate such issues as keeping confidential the business secrets and intellectual property rights of the employers in the labour contract.

With respect to a worker who has the obligation of keeping secrets, the employer may stipulate non-competition clauses with the worker in the labour contract or in the confidentiality agreement and stipulate that economic compensations shall be given to the worker by month within the non-competition period after the labour contract is cancelled or terminated. Where the worker is in violation of the stipulation on non-competition, he shall pay a penalty for breach of contract to the employer.

**Article 24** The personnel under non-competition shall be limited to senior managers, senior technicians and other personnel who have the obligation to keep secrets in the entity. The range, geographical scope and time limit for non-competition shall be stipulated by the employer and the worker. The stipulation relating to non-competition shall not violate any law or regulation.

After the cancellation or termination of a labour contract, the period of non-competition for any of the persons referred to in the preceding paragraph to work for any other employer producing or engaging in products of the same category or conducting business of the same category as this employer shall not be more than two years.

**Article 25** Except for the circumstances as prescribed in Articles 22 and 23 of this Law, the employer shall not stipulate in the labour contract that the worker shall pay the penalty for breach of contract.

**Article 26** The following labour contracts are invalid or are partially invalid if:

- (1) Any party concludes or modifies, by way of deception or coercion or taking advantage of the other party'S difficulties, makes the other party to conclude or to make an amendment of a labour contract that is contrary to that party'S true will;
- (2) Any employer exempts its legal liability thereof or denies the worker'S rights; or
- (3) Any violation of mandatory provisions of laws or administrative regulations occurs.

In the case of any dispute relating to the invalid or partially invalid labour contract, the labour dispute arbitration institution or the people'S court shall be responsible for the confirmation.

**Article 27** In case the invalidity of any part of a labour contract does not affect the validity of the other parts thereof, the other parts shall still remain valid.



**Article 28** Where a labour contract is confirmed as invalid, if the worker has already worked for the employer, the employer shall pay remunerations to the worker. The amount of remunerations shall be determined according to the remuneration to the workers taking up the same or similar posts of this entity by analogy.

### **Chapter III Performance and Alteration of labour Contracts**

**Article 29** Employers and workers shall fully perform their obligations respectively in accordance with the stipulations in the labour contracts.

**Article 30** An employer shall pay the workers thereof the full amount of remunerations in a timely manner in accordance with the contractual stipulations and the provisions of the state.

In case any employer postpones or fails to pay the full amount of remunerations, workers may apply to the local people'S court for an order of payment and the people'S court shall issue an order of payment according to law.

**Article 31** Employers shall strictly perform the criterion on labour quota, and may not force any worker to work overtime or do so in a disguised form. As for the employer that arranges overtime work, it shall pay the worker for the overtime work in accordance with the relevant provisions of the state.

**Article 32** Where any worker refuses to perform dangerous operations due to the illicit command or forcibly order of the manager of the employer, he may not be deemed to be in violation of the labour contract.

Workers are entitled to criticize, expose to the authorities or bring a lawsuit against the employer if the employer'S work conditions may endanger their life safety and health.

**Article 33** Alterations of the name, legal representative, key principal or investor of any employer may not influence the performance of the labour contracts.

**Article 34** In the case of merger or split-up of the employer, the original labour contracts thereof shall still remain valid. Such labour contracts shall be performed by the employer succeeding to the rights and obligations of the aforesaid employer.

**Article 35** Employers and workers may alter the contents as stipulated in the labour contract upon consensus by consultation. The alterations to the labour contracts shall be made in written form.

The employer and the worker shall hold one copy of the altered labour contract respectively.



## Chapter IV Cancellation and Termination of labour Contracts

**Article 36** An employer and a worker may cancel the labour contract upon consensus by consultation.

**Article 37** A worker may cancel the labour contract if he informs the employer in written form 30 days in advance. During the probation period, a worker may cancel the labour contract if he informs the employer three days in advance.

**Article 38** In the case of any of the following circumstances occurring to an employer, a worker may cancel the labour contract:

- (1) It fails to provide labour protection or work conditions as stipulated in the labour contract;
- (2) It fails to pay the full amount of remunerations in a timely manner;
- (3) It fails to pay social security premiums for the workers according to law;
- (4) The bylaws thereof are inconsistent with any law or regulation and damage the rights and interests of the workers;
- (5) A labour contract is invalid due to the circumstance referred to in Paragraph 1 of Article 26 of this Law; or
- (6) Any other circumstance as prescribed by law or administrative regulation under which the labour contract may be cancelled.

Where any worker is forced to work by violence, threat or illegally limiting his personal freedom, or is forced to perform dangerous operations which may endanger his personal safety under illicitly commands or forces of the employer, the worker may immediately cancel the labour contract without informing the employer in advance.

**Article 39** In the case of any of the following circumstances occurring to a worker, the employer may cancel the labour contract:

- (1) He has been proved not to satisfy the recruitment requirements during the probation period;
- (2) He is in serious violation of the bylaws of the employer;
- (3) He causes any severe damages to the employer due to his grave negligence to duties or seeking private benefits;
- (4) He establishes a labour relationship with other employers at the same time and may seriously influence his completion of the work in this entity, or he refuses to make a correction after the employer has pointed it out;





(5) The labour contract is invalidated due to the circumstance referred to in Subparagraph (1), Paragraph 1, Article 26 of this Law; or

(6) He is subject to criminal liabilities according to law.

**Article 40** In the case of any of the following circumstances, the employer may cancel the labour contract after it notifies the worker himself in written form 30 days in advance or after it pays the worker an extra month'S salary:

(1) The worker falls ill or is injured for a non-work-related reason, and is not able to bear the original post after the expiration of the medical treatment period as prescribed, nor can he assume any other position as arranged by the employer;

(2) The worker is incapable of doing his job and remains so upon training or upon adjustment to his post; or

(3) The objective circumstance on which the conclusion of the labour contract is based has changed significantly, which results in that the labour contract is unable to be performed and no agreement concerning the modification of contents of the labour contract is reached after consultation between the employer and the worker.

**Article 41** In the case of any of the following circumstances, if the employer needs to cut down above 20 workers, or if it needs to cut down less than 20 workers but the number accounts for 10 percent or above of the total number of the workers, the employer shall make an explanation to the labour union or to all workers 30 days in advance. After it has solicited the opinions of the labour union or the workers, it may have the reduction after reporting the plan to the labour administrative department:

(1) It is under revitalization in accordance with the Enterprise Bankruptcy Law;

(2) Serious problems in production and business operation occur;

(3) The enterprise has changed products, made significant technological renovation or adjusted the form of business operation, and still needs to have reduction after the labour contracts are altered; or

(4) The objective economic circumstance, on which the labour contract is based, has altered significantly and it is unable to perform the labour contract.

Priority shall be given to the following workers when the employer has a reduction:

(1) Those who have concluded labour contracts with a long fixed period;

(2) Those who have concluded labour contracts without a fixed period; and

(3) Those whose family has no other workers and have seniors or minors to support.

If any employer that cuts down the number of workers according to Paragraph 1 of this Article intends to hire new workers within six months after the reduction, it shall inform



the workers cut down and shall give priority to the workers cut down under equal conditions.

**Article 42** In the case of any of the following circumstances occurring to a worker, the employer may not cancel the labour contract in accordance with Articles 40 and 41 of this Law:

- (1) Any worker who conducts operations exposing him to occupational disease hazards has not gone through an occupational health check before leaving his post, or is suspected of having an occupational disease and is under diagnoses or medical observation;
- (2) Any worker who has occupational disease or was injured at work has lost or partially lost his capacity to work as confirmed during his employment with the employer;
- (3) Any worker is suffering from illness or is injured not at work, and the period of medical treatment as prescribed therefore has not expired;
- (4) Any female worker is in her pregnancy, confinement or lactation period;
- (5) Any worker has been working for the employer for more than 15 years continuously and it is less than five years away from his legal retirement age;
- (6) Other circumstances as prescribed by laws or administrative regulations.

**Article 43** Any employer that cancels a labour contract unilaterally shall notify the labour union with relevant explanations in advance. In case the employer is in violation of any law, administrative regulation or stipulation of the labour contract, the labour union is entitled to require the employer to make a correction. The employer shall take the opinions of the labour union into account and notify the labour union concerning the relevant results in written form.

**Article 44** In the case of any of the following circumstances, labour contracts shall be terminated:

- (1) The term of the labour contract expires;
- (2) The worker has begun to enjoy the basic endowment insurance treatment;
- (3) The worker is deceased, or is dead or missing as announced by the people'S court;
- (4) The employer is announced bankrupt according to law;
- (5) The employer is revoked of business license thereof, ordered to close down, discharged, or it determines to dismiss before the schedule;
- (6) Other circumstances as prescribed in laws or administrative regulations occur.



**Article 45** Where a labour contract expires, if it is under any of the circumstances as prescribed in Article 42 of this Law, the term of labour contract shall be correspondingly extended to the time when the relevant circumstance disappears. However, the issues concerning termination of the labour contract of a worker who has lost or partially lost his capacity to work as prescribed in Subparagraph (2) of Article 42 of this Law shall be handled under the relevant provisions regarding occupational injury insurance.

**Article 46** In the case of any of the following circumstances, employers shall make an economic compensation to the workers:

- (1) Any worker cancels the labour contract according to Article 38 of this Law;
- (2) Any employer intends to cancel the labour contract with the worker according to Article 36 of this Law and reaches consensus with the worker by consultation;
- (3) The employer cancels the labour contract pursuant to Article 40 of this Law;
- (4) The employer cancels the labour contract subject to the Paragraph 1 of Article 41 of this Law;
- (5) The labour contract is a contract with a fixed period, which is terminated in accordance with Paragraph 1 of Article 44 of this Law, except that the worker disagrees to renew the contract even though the conditions offered by the employer are the same as or better than those stipulated in the current contract;
- (6) The labour contract is terminated in accordance with Subparagraphs (4) and (5) of Article 44 of this Law; or
- (7) Other circumstances as prescribed by laws and administrative regulations.

**Article 47** The economic compensation shall be paid to workers according to the number of years he has worked for the employer by the rate of one month'S salary for each full year he worked. Any period of above six months but less than one year shall be deemed as one year. The economic compensations that are paid to a worker for any period of less than six months shall be half of his monthly salary.

If the monthly salary of a worker is more than three times higher than the average monthly salary of workers as announced in the previous year by the people'S government at the municipal level directly under the Central Government or at the level of districted city where the entity is situated, the rate for the economic compensations paid to him shall be three times the average monthly salary of workers and the period subject to compensation may not exceed 12 years.

Monthly salary as mentioned in this Article means the average monthly salary of the worker for the 12 months before cancellation or termination of the labour contract thereof.

**Article 48** In the case of any employer cancels or terminates a labour contract that violates this Law, if any worker requests for continual performance of the contract, the employer



shall do so as required. If the worker does not request so or continual performance of the labour contract is impossible, the employer shall pay damages to the worker in accordance with Article 87 of this Law.

**Article 49** The state shall adopt relevant measures to establish and perfect a system which ensures that the workers' social security relationship can be transferred from one region to another and can be continued in other regions.

**Article 50** When canceling or terminating a labour contract, the employer shall issue a certification for the cancellation or termination of the labour contract simultaneously and shall complete the procedures for the transfer of the worker's archives and social security relationship within 15 days.

The worker shall go through the procedures for the handover of his work as stipulated between both parties. In case the employer shall pay an economic compensation to the worker as required by relevant provisions of this Law, it shall make a payment upon completion of the procedures for the handover of the work.

The text of the cancelled or terminated labour contracts shall be preserved by the employer for at least two years for reference.

## **Chapter V Special Rules**

### **Section 1 Collective Contracts**

**Article 51** The enterprise workers, as one party, may conclude a collective contract with the employer in terms of remuneration, working hours, rest and vacation, work safety and healthy care, social insurance and welfare, etc. upon equal consultation. The draft of the collective contract shall be presented to workers' congress or all the workers for discussion and approval.

A collective contract shall be concluded between the labour union that is on behalf of the enterprise workers and the employer. In case of any employer that may not have a labour union yet, the contract shall be concluded between the employer and the representatives as chosen by the workers upon the guidance of the labour union at the next higher level.

**Article 52** The enterprise workers, as one party, may conclude specialized collective contracts with the employer with respect to the work safety and sanitation, protection of the rights and interests of female workers, the salary adjustment mechanism, etc.

**Article 53** In regions of county level or below, the labour unions may conclude industrial or regional collective contracts with the representatives of enterprises in such industries as construction, mining, catering services, etc.

**Article 54** After the conclusion of a collective contract, it shall be submitted to the labour administrative department. Where the labour administrative department raises no



objection within 15 days as of the receipt of the collective contract, the collective contract shall become effective.

A collective contract that has been concluded according to law is binding upon both the employers and the workers. An industrial or regional collective contract is binding upon both the employers and workers in the industry or in the region.

**Article 55** Such standards as remunerations, working conditions, etc. as prescribed in a collective contract shall not be lower than the minimum standards as prescribed by the local people'S government. The standards such as remunerations, working conditions, etc. as prescribed in the labour contract between an employer and a worker shall not be lower than those as prescribed in the collective contract.

**Article 56** In case an employer breaches the collective contract and infringes upon the labour rights and interests of the workers, the labour union may demand the employer to bear the liability according to law. Where any dispute arises from the performance of the collective contract and no agreement is reached upon consultation, the labour union may apply for arbitration or bring a lawsuit according to law.

## Section 2 labour Dispatch

**Article 57** labour dispatch service providers shall be established as prescribed by the Company Law and have registered capital of no less than 500,000 yuan.

**Article 58** labour dispatch service providers are employers as mentioned in this Law and shall perform obligations toward workers. The labour contract between a labour dispatch service provider and a worker to be dispatched shall specify the issues as prescribed in Article 17 of this Law, and shall also indicate issues such as the entity to which the worker will be dispatched, the dispatched term, post, etc.

The labour contract between the labour dispatch service provider and the dispatched workers shall be a labour contract with a fixed term of more than two years, and the remunerations thereof shall be paid by the labour dispatch service provider on a monthly basis. During periods when there is no work for the workers, relevant remunerations shall be paid to such workers by the labour dispatch service provider on a monthly basis at the minimum salary as prescribed by the people'S government of the region where the labour dispatch service provider is situated.

**Article 59** When dispatching workers, a labour dispatch service provider shall conclude a labour dispatch agreement with the entity that accepts the workers in a labour dispatch manner (hereinafter referred to as the accepting entity). Relevant issues shall be stipulated in the dispatch agreement regarding the posts for dispatched workers, the number of dispatched workers, the term of dispatch, the amount and payment of remunerations and social security premiums, and the liability for breach of agreement.



An accepting entity shall determine the term of dispatch with the labour service dispatch provider in light of the actual requirements of the posts, and shall not divide a continuous term of labour use into a couple of short-term dispatch agreements.

**Article 60** A labour dispatch service provider shall notify the dispatched workers concerning the content of the dispatch agreements.

No labour dispatch service provider may withhold any remuneration that is paid to the workers by the accepting entity under the dispatch agreement.

No labour dispatch service provider or accepting entity may charge any fee against any dispatched workers.

**Article 61** Where a labour dispatch service provider designates a worker to an accepting entity in another region, the worker'S remuneration and working conditions shall be subject to relevant standards of the location where the accepting entity is situated.

**Article 62** The following obligations shall be performed by an accepting entity:

- (1) Carrying out labour standards of the state and providing relevant working conditions and labour protection;
- (2) Informing the dispatched workers of job requirements and labour remuneration;
- (3) Paying overtime remunerations and performance bonuses and providing benefits relevant to the post;
- (4) Providing the dispatched workers who assume the posts with corresponding training as required; and
- (5) Adopting a normal salary adjustment system in the case of continuous placement.

No accepting entity may reassign the dispatched workers to any other employer.

**Article 63** The dispatched workers shall enjoy the right to obtain the same pay as that received by workers of the accepting entity for the equal work. In case there is no worker in the same post in the accepting entity, the remunerations thereof shall be determined by referring to the payment in the place where the accepting entity is situated to workers at the same or a similar post.

**Article 64** The dispatched workers are entitled to join the labour union or to organize such unions in the labour dispatch service provider or in the accepting entity according to law, in order to safeguard their lawful rights and interests.

**Article 65** A dispatched worker may cancel the labour contract with the labour dispatch service provider as prescribed in Articles 36 and 38 of this Law.



Where a dispatched worker is under any of the circumstances as mentioned in Article 39 and Subparagraphs (1) and (2) of Article 40, the accepting entity may return the worker back to the labour dispatch service provider, and the labour dispatch service provider may cancel the labour contract thereof as prescribed in this Law.

**Article 66** The dispatched workers shall assume the temporary, assistant or substitute posts in general.

**Article 67** No accepting entity may establish a labour dispatch service provider to dispatch workers to itself or its subordinates.

### Section 3 Non-Full-Time labour

**Article 68** Non-full-time labour refers to a form of labour for which the remuneration is generally calculated on hourly basis, the average working hours of a worker per day shall not be more than four hours and the cumulative working hours per week for the same employer shall not be more than 24 hours.

**Article 69** Both parties related to non-full-time labour may conclude an oral agreement.

Any worker that conducts non-full-time labour may conclude labour contracts with one employer or more, but no labour contract concluded later may influence the performance of the labour contract concluded previously.

**Article 70** No probation period may be stipulated for non-full-time labour by both parties.

**Article 71** Either of the parties related to non-full-time labour may notify the other party to terminate the labour at any time. When terminating any non-full-time labour, the employer shall pay no economic compensation to the worker.

**Article 72** The standards for the remuneration for non-full-time labour on hourly basis shall be no less than the minimum hourly salary rates as prescribed by the people's government of the region where the employer is situated.

The period of remuneration settlement and payment for non-full-time labour shall not be more than 15 days.

### Chapter VI Supervision and Inspection

**Article 73** The labour administrative department of the State Council shall have the responsibility of the surveillance and inspection on the implementation of the labour contracts system all over the country.

The labour administrative departments of the local people's governments at or above the county level shall have the responsibility of surveillance and inspection on the implementation of the labour contracts system within their administrative areas respectively.



During the surveillance and inspection on the implementation of the labour contracts system, the labour competent authorities of the people'S governments at or above the county level shall consult the labour unions, enterprise representatives and relevant industrial competent authorities.

**Article 74** The labour administrative departments of the local people'S governments at or above the county level shall perform surveillance and inspection on the following implementation of the labour contract system according to laws:

- (1) The employers?constitution of bylaws and regulations in direct relation to the interests of workers, and the implementation conditions thereof;
- (2) The conclusion and cancellation of labour contracts by employers and workers;
- (3) The abidance by relevant regulations concerning labour dispatch by labour dispatch service providers and the accepting entities;
- (4) The employers?abidance by provisions of the state regarding working hours, rest and vacation of the workers;
- (5) The employers?payment for remuneration as specified in the labour contracts and abidance by the minimum salary standards;
- (6) The employers?participation in the social insurance and payment for social insurance premiums; and
- (7) Other labour surveillance issues as prescribed by relevant laws and regulations.

**Article 75** When conducting the surveillance and inspection, the labour administrative department of the people'S government at or above the county level is entitled to consult relevant materials with respect to the labour contracts and collective contracts and it has the rights to carry out spot inspections on the work places. The employers and workers shall provide relevant information and materials faithfully.

When performing an inspection, the functionaries of the labour administrative department shall show the certificates, exercise their powers according to laws and enforce the law in a courteous way.

**Article 76** The relevant competent authorities of construction, sanitary, work safety surveillance and administration, etc. of the people'S governments at or above the county level shall surveil and administer the employers?implementation of the labour contracts system under their respective responsibilities.

**Article 77** With respect to any worker whose lawful rights and interests is infringed, he is entitled to require the relevant department to deal with the case, or apply for an arbitration or bring a lawsuit according to law.





**Article 78** A labour union shall maintain the workers' legitimate rights and interests in accordance with relevant law and supervise the employer's performance of the labour contracts and collective contracts. In the case of any violation of any law or regulation or any breach of labour contract or collective contract by any employer, the labour union has the rights to bring forward opinions and require this employer to make a correction. Where the worker applies for arbitration or brings a lawsuit, the labour union shall support and assist him according to law.

**Article 79** Any organization or individual has the right to report any violations of this Law. The labour competent authorities of the people's governments at or above the county level shall timely verify and handle such violations and shall grant awards to the person worthy of merit in reporting the violations.

## **Chapter VII Legal Liabilities**

**Article 80** In case an employer's bylaws in direct relation to the workers' interests are inconsistent with any law or regulation, it shall be ordered to make a correction by the labour administration department and shall be given a warning. If any damage occurs to the workers by the aforesaid bylaws, the employer shall assume the liability for compensation.

**Article 81** If a labour contract provided by an employer fails to specify any of the mandatory clauses as requires to be contained in such contracts by this Law or if an employer fails to deliver the document of the labour contract to the worker, it shall be ordered to make a correction by the labour administration department. If any damage occurs to the worker, the employer shall assume the liability for compensation.

**Article 82** If an employer fails to conclude a labour contract in written form with a worker in more than one month but less than one year after the date of starting to use him, it shall pay the worker double amount of his salary every month.

If an employer fails to conclude a labour contract without a fixed period with a worker against this Law, it shall pay the worker double amount of his salary every month, starting from the date on which a labour contract without a fixed period should have been concluded.

**Article 83** If any employer stipulates the probation period with any worker in violations of this Law, it shall be ordered to make a correction by the labour administration department. If the illegally stipulated probation has been performed, the worker shall be paid compensation by the employer in light of the time worked on probation beyond the statutory probation period, at the rate of the worker's monthly salary after probation.

**Article 84** Where an employer violates this Law due to detaining any worker's identity card or other certificates, it shall be ordered by the labour administrative department to return the aforesaid certificates to the worker within a time limit and shall be punished according to law.



Where an employer is in violation of this Law due to collecting property from workers in form of guaranty or in any other excuse, it shall be ordered by the labour administrative department to return the aforesaid property to the workers within a time limit and shall be imposed upon a fine of no less than 500 yuan but not more than 2,000 yuan for each person. If any damage occurs to the workers, the employer shall bear the liability for compensation.

In the case of any lawful cancellation or termination of the labour contract by a worker, if the employer retains the archives or other articles of the worker, it shall be punished under the provisions of the preceding paragraph.

**Article 85** In the case of any of the following circumstances occurring to any employer, it shall be ordered by the labour administrative department to pay the remunerations, overtime remunerations or economic compensations within a time limit. If the remuneration is lower than the local minimum salary, the employer shall pay the shortfall. If payment is not made within the time limit, the employer shall be ordered to pay an extra compensation to the worker at a rate of not less than 50 percent and not more than 100 percent of the payable amount:

- (1) It fails to timely pay a worker full remunerations as stipulated in the labour contract or prescribed by the state;
- (2) It pays a worker the salary that is lower than the local minimum salary;
- (3) It arranges overtime work but does not pay overtime remunerations; or
- (4) It cancels or terminates a labour contract without paying the worker the economic compensation in accordance with this Law.

**Article 86** Where a labour contract has been confirmed as invalid in accordance with Article 26 of this Law, if any damage occurs to the other party, the party at fault shall be liable for compensation.

**Article 87** Where any employer cancels or terminates the labour contract in violation of this Law, a compensation shall be paid to the worker at the rate of twice of the economic compensations as prescribed in Article 47 of this Law.

**Article 88** In the case of any of the following circumstances, an employer shall be given an administrative punishment. If any crime is constituted, it shall be investigated for criminal liabilities. If any damage occurs to the worker, the employer shall bear the liability for compensation:

- (1) Forcing the worker to work by way of violence, threat or illegal limitation of personal freedom;
- (2) Illegally directing or ordering any worker to conduct dangerous operations that may imperil the worker'S personal safety;



(3) Affronting, physically punishing, beating, illegally searching or detaining any worker;  
or

(4) Providing bad working conditions or a seriously polluted environment, leading to severe damages to the physical or mental health of workers.

**Article 89** Where any employer is in violation of this Law because of failing to issue a certificate in written form for the cancellation or termination of a labour contract to a worker, the labour administrative department shall order it to make a correction. If any damage occurs to the worker, it shall bear the liability for compensation.

**Article 90** With respect to any worker cancels the labour contract in violation of this Law, or is in violation of relevant stipulations of the labour contract concerning the confidentiality obligation or non-competition, he shall bear the liability for compensation if any loss occurs to the employer.

**Article 91** Where any employer hires a worker that has not cancelled or terminated a labour contract with other employer, if any loss occurs to the former employer, the new employer shall bear joint liability of compensation.

**Article 92** In case any labour dispatch service provider is in violation of this Law, the labour administrative department and other relevant competent authorities shall order it to make a correction. In the case of any severe circumstances, it shall be imposed a fine of not less than 1,000 but not more than 5,000 per person and its business license shall be revoked by the administrative department for industry and commerce. If any damage occurs to the dispatched workers, the labour dispatch service provider and the accepting entity shall be jointly liable for compensation.

**Article 93** In the case of any committed violation or crime by an employer without lawful business operation qualifications, it shall be investigated for legal liabilities. If the workers have already worked for the employer, the employer or its capital contributors shall pay the workers remunerations, economic compensations or indemnities as prescribed in this Law. If any damage occurs to the worker, they shall bear the liability for compensation.

**Article 94** In case any worker is hired by an individual as a business operation contractor in violation of this Law, if any damage occurs to the worker, the contract-letting organization and the individual business operation contractor shall bear joint liability for compensation.

**Article 95** Where the labour administrative department, other relevant administrative department, or any of the personnel thereof neglects its/his duties, fails perform the statutory duties or exercises its/his powers in violation of law, if any damage occurs to the worker or the employer, it/he shall bear the liability for compensation. The directly liable principal and other directly liable persons shall be given an administrative sanction. In the case of any constituted crime, they shall be investigated for criminal liabilities.



## Chapter VIII Supplementary Rules

**Article 96** With respect to any conclusion, performance, alteration, cancellation or termination of labour contract between a public institution and a worker under the labour system, it shall be subject to this Law, except that it is otherwise prescribed by any law, administrative regulation or by the State Council.

**Article 97** With respect to any labour contract that has been concluded before the implementation of this Law and continues to exist on the implementation date of this Law, it shall be kept on performing. According to Subparagraph (3) of the Paragraph 2 of Article 14 of this Law, the number of consecutive times on which a labour contract with a fixed period is concluded shall be calculated from the first renewal of such contract after the implementation of this Law.

If a labour relationship has been established before the implementation of this Law without concluding a labour contract in written form, the aforesaid contract shall be concluded within one month as of the date on which this Law comes into force.

Where a labour contract that exists on the implementation date of this Law is cancelled or terminated after the implementation of this Law, if any economic compensation shall be paid to the worker under Article 46 of this Law, the number of years for which the economic compensation is payable shall be calculated from the implementation date of this Law. If an employer shall pay economic compensation to a worker under relevant effective regulations before the implementation of this Law, it shall be handled subject to the relevant effective regulations at that time.

**Article 98** This Law shall enter into force as of January 1, 2008.