

**Labor Contract Law
of the People's Republic of China
(2012 Revision)**

(Adopted at the 28th Session of Standing Committee of the Tenth National People's Congress of the People's Republic of China on June 29, 2007; amended in accordance with the Decision on Amending the Labor Contract Law of the People's Republic of China at the 30th Session of the Standing Committee of the Eleventh National People's Congress on December 28, 2012; Order No.73 of the President of the People's Republic of China)

Contents

Chapter I General Provisions

Chapter II Conclusion of Labor Contracts

Chapter III Performance and Variation of Labor Contracts

Chapter IV Rescission and Termination of Labor Contracts

Chapter V Special Provisions

 Section 1 Collective Contracts

 Section 2 Secondment of Labor

 Section 3 Part-Time Workers

Chapter VI Supervision and Inspection

Chapter VII Legal Liability

Chapter VIII Supplementary Provisions

Chapter I General Principles

Article 1 This Law is formulated for the purposes of refining the labor contract system, specifying the rights and obligations of the parties to a labor contract, protecting the legitimate rights and interests of workers and building and developing harmonious and stable labor relationships.

Article 2 This Law shall apply to establishment of labor relationships between enterprises, individual economic organizations, private non-enterprise entities etc. in the People's Republic of China (hereinafter referred to as the "employers") and their workers and the conclusion, performance, variation, rescission or termination of labor contracts.

Establishment of labor relationships between State agencies, institutions and social organizations and their workers and conclusion, performance, variation, rescission or termination of labor contracts shall be carried out pursuant to this Law.

Article 3 Conclusion of labor contracts shall comply with the principles of legality, equitableness, fairness, voluntary participation, negotiation and agreement and honesty and trustworthiness.

Labor contracts concluded pursuant to the law shall be legally binding and the employers and the workers shall perform the obligations stipulated in the labor contracts.

Article 4 Employers shall establish and improve upon labor rules and system pursuant to the law to ensure workers' entitlement to labor rights and performance of labor obligations.

When an employer formulates, revises or decides on rules or major matters pertaining to labor remuneration, working hours, rest periods and off days, labor safety and health, insurance and welfare, staff training, labor discipline and labor quota administration etc. which directly involves the vital interests of workers, such matters shall be discussed by the employee representatives congress or all staff who shall make proposal and give their opinion and the employer shall carry out equal negotiation with the labor union or employee representatives before making a decision.

During the decision and implementation of rules and major matters, the labor union or staff shall have the right to raise their concern with the employer on any inappropriate issues and such issues shall be corrected and refined through negotiation.

Employers shall announce decisions on rules and major matters which directly involve the vital interests of workers or notify the workers.

Article 5 The labor administrative authorities of People's Governments of county level and above shall, jointly with the labor union and representatives of enterprises, establish a proper tripartite labor relationship coordination mechanism to jointly study and resolve major issues in relation to labor relationships.

Article 6 Labor unions shall assist in and provide guidance for conclusion and performance of labor contracts between workers and employers pursuant to the law and shall establish a collective negotiation mechanism with employers to safeguard the legitimate rights and interests of workers.

Chapter II Conclusion of Labor Contracts

Article 7 An employer shall be deemed to have established a labor relationship with a worker with effect from the date of commencement of work. Employers shall establish a register of employees for inspection purpose.

Article 8 When recruiting a worker, the employer shall truthfully notify the worker of the job duties, working conditions, work premises, occupational hazards, work safety and health conditions, labor remuneration and any other information in which the worker is interested to know; an employer shall have the right to ask about basic information of the worker in direct relation to the labor contract, the worker shall answer truthfully.

Article 9 An employer recruiting workers shall not retain the identity card or other certificate of a worker or require a worker to provide guarantee or collect monies from a worker under any pretext.

Article 10 A written labor contract shall be concluded for the establishment of a labor relationship.

Where a written labor contract is not concluded simultaneously with the establishment of a labor relationship, a written labor contract shall be concluded within one month from the date of commencement of work.

Where an employer and a worker have concluded a labor contract prior to employment, the labor relationship shall be deemed established on the date of commencement of work.

Article 11 Where an employer fails to conclude a written labor contract for employment of a worker or where the labor remuneration agreed with a worker is unclear, the labor remuneration of a newly recruited worker shall be executed pursuant to the standard stipulated in the collective contract; where there is no collective contract or where there is no such provision in the collective contract, the same remuneration shall be paid for the same job position.

Article 12 Labor contracts are divided into fixed-term labor contracts, non-fixed-term labor contracts and labor contracts which expire upon completion of agreed assignments.

Article 13 A fixed-term labor contract shall refer to a labor contract for which the employer and the worker have agreed on the date of termination.

Upon negotiation and consensus between the employer and the worker, a fixed-term labor contract may be concluded.

Article 14 A non-fixed-term labor contract shall refer to a labor contract for which the employer and the worker have agreed that the date of termination is not fixed.

Upon negotiation and consensus between the employer and the worker, a non-fixed-term labor contract may be concluded. Under any of the following circumstances, a worker may propose or agree to renewal or conclusion of labor contract; except where a worker proposes for the conclusion of a fixed-term labor contract, a non-fixed-term labor contract shall be concluded:

- (1) the worker has worked for the employer for a period of 10 years consecutively;
- (2) when the employer first implemented the labor contract system or when a new labor contract is concluded upon restructuring of a State-owned enterprise, the worker has worked for the employer for a period of 10 years consecutively and will attain his/her statutory retirement age in less than 10 years' time; or
- (3) where a fixed-term labor contract has been concluded twice consecutively and the worker who does not fall under any of the categories stipulated in Article 39 and item (1) and item (2) of Article 40 renews his/her labor contract.

Where an employer fails to conclude a written contract with a worker after one year has lapsed since the date of commencement of work, the employer and the worker shall be deemed to have concluded a non-fixed-term labor contract.

Article 15 A labor contract which expires upon completion of agreed assignments shall refer to a labor contract between an employer and a worker for which the contract shall terminate upon completion of certain assignment.

Upon negotiation and consensus between an employer and a worker, a labor contract which expires upon completion of agreed assignments may be concluded.

Article 16 A labor contract shall be subject to negotiation and consensus between an employer and a worker and shall come into effect upon signing and affixation of seal by the employer and the worker on copies of the labor contract.

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

Article 17 A labor contract shall include the following clauses:

- (1) name and address of the employer and the legal representative or key person-in-charge of the employer;
- (2) name, address and identity card number or other valid identity document number of the worker;
- (3) term of labor contract;
- (4) job duties and work premises;

(5) working hours and rest periods and off days;

(6) labor remuneration;

(7) social security;

(8) labor protection, working conditions and occupational hazard prevention and protection; and

(9) any other matters to be included in a labor contract as stipulated by the laws and regulations.

In addition to the essential clauses of a labor contract stipulated in the preceding paragraph, an employer and a worker may agree on the probationary period, training, confidentiality, supplementary insurance and welfare and incentives etc.

Article 18 Where a labor contract is unclear on the provisions for labor remuneration and working conditions etc. and in the event of a dispute, the employer and the worker may re-negotiate; where the negotiation is unsuccessful, the provisions of the collective contract shall apply; where there is no collective contract or where the collective contract has no provision on labor remuneration, the same remuneration shall be paid for the same job position; where there is no collective contract or where the collective contract has no provisions on working conditions etc., the relevant provisions of the State shall apply.

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

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

For labor contracts which expire upon completion of agreed assignments or labor contracts with a term of less than three months, no probationary period shall be agreed upon.

The probationary period shall form part of the term of the labor contract. Where a labor contract only stipulates a probationary period, the probationary period is not valid, and the length of the period shall be the term of the labor contract.

Article 20 The wage amount of a worker during his/her probationary period shall not be less than the lowest wage amount for the same job position in the employer's organization or 80% of the wage amount agreed in the labor contract and shall not be less than the minimum wage standard of the locality of the employer.

Article 21 Except where a worker falls under any of the categories stipulated in Article 39 and item (1) and item (2) of Article 40 during the probationary period, an employer shall not rescind the labor contract. Where an employer rescinds a labor contract during the probationary period of a worker, it shall explain the reason to the worker.

Article 22 Where an employer bears special training expenses for a worker in providing professional technical training, it may conclude an agreement with the worker to stipulate a period of service.

Where a worker breaches the agreement on period of service, he/she shall pay default penalty to the employer pursuant to the agreement. The amount of default penalty shall not exceed the training expenses borne by the employer. The amount of default penalty demanded by the employer from the worker shall not exceed the amount of training expenses to be amortized over the unperformed period of service.

The agreement between an employer and a worker on a period of service shall not have any impact on the raise of labor remuneration during the period of service pursuant to normal wage increment mechanism.

Article 23 An employer and a worker may agree on keeping confidentiality of the employer's commercial secrets and confidential matters in relation to intellectual property in a labor contract.

Where a worker is obliged to keep confidentiality, the employer may agree with the worker in a labor contract or confidentiality agreement on a non-competition restrictive covenant and agree that upon the rescission or termination of a labor contract, the employer shall grant the worker economic damages on a monthly basis during the non-competition restrictive covenant period. Where the worker has violated the non-competition restrictive covenant, he/she shall pay a default penalty to the employer pursuant to the agreement.

Article 24 Personnel subject to non-competition restrictive covenant shall be limited to the employer's senior management personnel, senior technical personnel and other personnel who are obliged to keep confidentiality. The scope, geographical region and duration of non-competition restrictive covenant shall be agreed between the employer and the worker; non-competition restrictive covenant shall not violate the provisions of laws and regulations.

Upon rescission or termination of a labor contract, the non-competition restrictive covenant period in which the aforesaid stipulated personnel shall not be employed by another employer which engages in production or business in the same type of products or provision of the same type of services as the employer and shall not engage in own production or business in the same type of products or provision of the same type of services as the employer shall not exceed two years.

Article 25 Except for the circumstances stipulated in Article 22 and Article 23, an employer shall not agree with a worker on bearing of default penalty by the worker.

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

(1) a labor contract which is concluded or varied by use of fraudulent or coercive tactics or taking advantage of the counterparty's unfavorable position to cause the counterparty to act against the real intention;

(2) where the employer waives its statutory liabilities and exclude the worker from his/her rights; or

(3) where the mandatory provisions of the laws and administrative regulations are violated.

A dispute over a wholly or partly invalid labor contract shall be determined by a labor dispute arbitration agency or a People's Court.

Article 27 The partial invalidity of a labor contract shall not affect the validity of the other clauses of the contract and such other clauses shall continue to be valid.

Article 28 Where a labor contract is deemed to be invalid and the worker has provided labor services, the employer shall pay labor remuneration to the worker. The amount of labor remuneration shall be determined with reference to the labor remuneration of a worker holding the same or similar position in the employer's organization.

Chapter III Performance and Variation of Labor Contracts

Article 29 An employer and a worker shall perform their respective obligations fully pursuant to the provisions of the labor contract.

Article 30 Employers shall promptly pay labor remuneration to workers in full amount pursuant to the stipulations of the labor contract and the provisions of the State.

Where an employer defaults on payment or fails to promptly pay labor remuneration in full amount, a worker may apply to a People's Court for an order for payment and the People's Court shall issue an order for payment pursuant to the law.

Article 31 Employers shall strictly comply with the standard for labor quota and shall not coerce a worker directly or indirectly to work overtime. An employer which requires a worker to work overtime work shall pay the worker overtime wages pursuant to the relevant provisions of the State.

Article 32 Where a worker refuses to comply with any order of the management personnel of the employer which violates the rules or compels the worker to engage in risky work, such refusal shall not be deemed as a breach of the labor contract.

A worker shall have the right to criticize, complain or file a lawsuit against an employer in respect of working conditions which endanger life safety and physical health.

Article 33 The change of name of an employer or change of legal representative or key person-in-charge or investors etc. shall not affect the performance of a labor contract.

Article 34 Where an employer undergoes a merger or division, the original labor contract shall continue to be valid and the succeeding employer which succeeds the rights and obligations of the predecessor employer shall continue to perform the labor contract.

Article 35 Upon negotiation and consensus between an employer and a worker, the contents of a labor contract may be varied. Variation of a labor contract shall be made in writing.

The employer and the worker shall each hold a copy of the varied labor contract.

Chapter IV Rescission and Termination of Labor Contracts

Article 36 Upon negotiation and consensus between an employer and a worker, a labor contract may be rescinded.

Article 37 A worker may notify the employer with a 30-day advance notice in writing to rescind his/her labor contract. A worker may notify the employer with a three-day advance notice in writing during his/her probationary period to rescind his/her labor contract.

Article 38 Under any of the following circumstances, a worker may rescind the labor contract:

- (1) where the employer fails to provide labor protection or labor conditions pursuant to the provisions of the labor contract;
- (2) where the employer fails to promptly pay labor remuneration in full amount;
- (3) where the employer fails to contribute social security premiums for the worker pursuant to the law;
- (4) where the rules and system of the employer violate the provisions of laws and regulations and are prejudicial to the worker's rights and interests;
- (5) where the labor contract is rendered void under any of the circumstances stipulated in the first paragraph of Article 26; or

(6) any other circumstances where the worker may rescind a labor contract as stipulated by the laws and regulations.

Where an employer uses means such as violence, threat or illegal restriction of personal freedom to coerce a worker into provision of labor or where an employer gives orders which violate the rules or force a worker to engage in risk work which endangers the worker's personal safety, the worker may forthwith rescind the labor contract and shall not be required to give the employer advance notice thereof.

Article 39 Under any of the following circumstances, the employer may rescind the labor contract:

(1) where it is proven during the probationary period that the worker does not satisfy the employment criteria;

(2) where the worker has committed a serious breach of the employer's rules and system;

(3) where the worker is guilty of serious dereliction of duties and corruption and causes the employer to suffer significant damages;

(4) where the worker holds a labor relationship with another employer concurrently which has a severe impact on his/her performance of work tasks assigned by the employer or refuses to make correction as demanded by the employer;

(5) where the labor contract is rendered void under the circumstances stipulated in item (1) of the first paragraph of Article 26; or

(6) where criminal prosecution is instituted against the worker pursuant to the law.

Article 40 Under any of the following circumstances, the employer may rescind the labor contract by giving the worker a written notice 30 days in advance or by making an additional payment of one month's wage to the worker:

(1) where the worker suffers from an illness or a non-work-related injury and is unable to undertake the original job duties or other job duties arranged by the employer following completion of the stipulated medical treatment period;

(2) where the worker cannot perform his/her duties and remains to be incapable of performing the job duties after training or job transfer;

(3) where the objective circumstances for which the conclusion of the labor contract is based upon have undergone significant changes and as a result thereof, the labor contract can no longer be performed and upon negotiation between the employer and the worker, both parties are unable to reach an agreement on variation of the contents of the labor contract.

Article 41 Under any of the following circumstances where an employer needs to retrench 20 or more employees or where the number of employees to be retrenched is less than 20 but comprises 10% or more of the total number of employees of the enterprise, the employer shall explain the situation to the labor union or all staff 30 days in advance and seek the opinion of the labor union or the employees, the employer may carry out the retrenchment exercise upon reporting the retrenchment scheme to the labor administrative authorities:

- (1) the employer undergoes restructuring pursuant to the provisions of the Enterprise Bankruptcy Law;
- (2) the employer has serious production and business difficulties;
- (3) the enterprise undergoes a change of production, significant technological reform or change of mode of operation and upon variation of labor contracts, there is still a need for retrenchment; or
- (4) the objective circumstances for which the conclusion of a labor contract is based upon have undergone significant changes and as a result thereof, the labor contract can no longer be performed.

The following personnel shall be given priority to be retained in a retrenchment exercise:

- (1) a worker who has entered into a fixed-term labor contract of a longer period with the employer;
- (2) a worker who has entered into a non-fixed-term labor contract with the employer; or
- (3) a worker whose family members are not employed or who needs to support aged or under-aged family members.

Where an employer which carries out a retrenchment exercise pursuant to the provisions of the first paragraph of this Article is re-hiring employees within six months shall notify the retrenched personnel and the retrenched personnel shall be given priority for employment under the same conditions.

Article 42 Under any of the following circumstances, the employer shall not rescind a labor contract pursuant to the provisions of Article 40 and Article 41:

- (1) where a worker who has engaged in work exposed to occupational hazards has not undergone post-employment occupational health check or during the period where a worker is suspected to have contracted an occupational illness or under medical observation;
- (2) where a worker has contracted an occupational illness or suffered a work injury while working for the employer and is confirmed to have lost his/her labor capability wholly or partially;

- (3) during the stipulated medical treatment period of a worker suffering from illness or non-work-related injury;
- (4) during the pregnancy, maternity leave or breastfeeding period of a female worker;
- (5) where a worker has worked for 15 years consecutively with the employer and will attain his/her statutory retirement age in less than five years' time; or
- (6) any other circumstances stipulated by the laws and regulations.

Article 43 An employer which unilaterally rescinds a labor contract shall notify the labor union of the reason beforehand. Where the employer violates the provisions of laws and regulations or the labor contract, the labor union shall have the right to require the employer to make correction. The employer shall study the opinion of the labor union and notify the labor union in writing of the outcome.

Article 44 Under any of the following circumstances, a labor contract shall be terminated:

- (1) the labor contract has expired;
- (2) the worker has started exercising his/her basic pension insurance entitlements;
- (3) the worker is dead or declared dead by a People's Court or declared missing;
- (4) the employer is declared bankrupt pursuant to the law;
- (5) the employer's business license is revoked, the employer is ordered to close down, the employer is revoked or the employer has decided to dissolve prematurely; or
- (6) any other circumstances stipulated by the laws and regulations.

Article 45 Where a labor contract has expired under any of the circumstances stipulated in Article 42, the labor contract shall be extended and be terminated upon extinguishment of the corresponding circumstances. In the event of termination of a labor contract of a worker who has lost his/her labor capability as stipulated in item (2) of Article 42, the case shall be dealt with pursuant to the provisions of the State on work injury insurance.

Article 46 Under any of the following circumstances, the employer shall make economic damages to the worker:

- (1) the worker has rescinded the labor contract pursuant to the provisions of Article 38;
- (2) the employer has proposed rescission of labor contract to the worker pursuant to the provisions of Article 36 and has negotiated and agreed with the worker on rescission of labor contract;

- (3) the employer has rescinded the labor contract pursuant to the provisions of Article 40;
- (4) the employer has rescinded the labor contract pursuant to the provisions of the first paragraph of Article 41;
- (5) except where an employer proposes to renew a labor contract by maintaining or raising the provisions of the labor contract and the worker is not agreeable to the renewal, a fixed-term labor contract shall be terminated pursuant to the provisions of item (1) of Article 44;
- (6) the labor contract is terminated pursuant to the provisions of item (4) or item (5) of Article 44; or
- (7) any other circumstances stipulated by the laws and administrative regulations.

Article 47 Economic damages shall be paid to a worker based on the number of years of service of the worker and based on the standard of one month's wage for each completed year of service. Where the period of service is more than six months but less than a year, it shall be deemed as a completed year of service; where the period of service is less than six months, the employer shall pay half a month's wage to the worker as economic damages.

Where the monthly wage of a worker is more than three times the local average monthly wage of employees of the preceding year announced by the Municipal People's Government of the centrally-administered municipality or the municipality divided into districts where the employer is located, the economic damages standard for economic damages to be made to the worker shall be based on three times the average monthly wage and the years of service for which economic damages are paid for shall not exceed 12 years.

The monthly wage referred to in this Article shall mean the average wage of a worker over 12 months before the rescission or termination of the labor contract.

Article 48 Where an employer rescinds or terminates a labor contract in violation of this Law and the worker requests for performance of the labor contract to be continued, the employer shall continue to perform the labor contract; where the worker does not request for performance of labor contract to be continued or where the performance of labor contract cannot be continued, the employer shall pay compensation pursuant to the provisions of Article 87 of this Law.

Article 49 The State shall take measures to establish a proper cross-locality transfer and continuation system for workers' social insurance.

Article 50 An employer shall show proof of rescission or termination of a labor contract at the time of rescission or termination of the labor contract and shall complete filing and social insurance transfer formalities for the worker within 15 days.

The worker shall complete job handover pursuant to the agreement between both parties. Where the employer is required to pay economic damages to the worker pursuant to the relevant provisions of this Law, the payment shall be made at the completion of job handover.

An employer shall keep copies of rescinded or terminated labor contracts for at least two years for inspection purpose.

Chapter V Special Provisions

Section 1 Collective Contracts

Article 51 Enterprise employees and their employer may conclude a collective contract on matters such as labor remuneration, working hours, rest periods and off days, work safety and health and insurance and welfare etc. through negotiation. A draft collective contract shall be submitted to the employee representatives congress or all staff for discussion and adoption.

A collective contract shall be concluded between the labor union representing the enterprise employees and their employer; for an employer which has not established a labor union, the higher-level labor union shall guide the representatives elected by the workers to conclude a collective contract with the employer.

Article 52 Enterprise employees and their employer may conclude a special collective contract on work safety and health, protection of the rights and interests of female workers, wage adjustment mechanism etc.

Article 53 In industries such as building industry, mining and exploration industry and food and beverage industry etc. in regions below county level, the labor union and the enterprise representatives shall conclude an industry collective contract or a regional collective contract.

Article 54 Upon conclusion of a collective contract, a copy shall be submitted to the labor administrative authorities; where the labor administrative authorities do not raise any objection within 15 days from receipt of the copy of collective contract, the collective contract shall forthwith come into effect.

A collective contract concluded pursuant to the law shall be binding upon the employer and the workers. Industry or regional collective contracts shall be binding upon employers and workers in the industry or region.

Article 55 The standards for labor remuneration and working conditions etc. in a collective contract shall not be lower than the minimum standard stipulated by the local People's Government; the standards for labor remuneration and working conditions etc. in a labor

contract concluded between an employer and a worker shall not be lower than the standard stipulated in the collective contract.

Article 56 Where an employer violates the collective contract or infringes upon the workers' labor rights and interests, the labor union may, pursuant to the law, require the employer to bear liability; where a dispute arising from performance of a collective contract cannot be resolved through negotiation, the labor union may apply for arbitration or file a lawsuit pursuant to the law.

Section 2 Secondment of Labor

Article 57 Engaging in labor secondment business shall satisfy the following criteria:

- (1) The registered capital is not less than RMB 2 million;
- (2) The fixed business premises and facilities correspond to the business;
- (3) The labor secondment management system complies with the provisions of laws and administrative regulations;
- (4) Any other criteria stipulated by laws and administrative regulations.

Engaging in labor secondment business shall apply to the labor administrative authorities for administrative licensing pursuant to the law; upon obtaining administrative licensing, the corresponding company registration formalities shall be completed pursuant to the law. No organization or individual shall be allowed to engage in labor secondment business without a license.

Article 58 Labor secondment units are employers referred to in this Law and shall perform obligations of an employer towards their workers. A labor contract concluded between a labor secondment unit and a seconded worker shall, in addition to the contents stipulated in Article 17 of this Law, state the name of the secondment employer, the secondment period and job position etc. of the worker.

Labor secondment units shall enter into fixed-term labor contracts of two year and above with seconded workers and pay them labor remuneration on a monthly basis; during the period in which a seconded worker is not assigned any work duties, the labor secondment unit shall pay the worker remuneration on a monthly basis pursuant to the minimum wage standard stipulated by the local People's Government.

Article 59 A labor secondment unit shall enter into a labor secondment agreement with the secondment employer (hereinafter referred to as the "secondment employer") of seconded workers. A labor secondment agreement shall stipulate the secondment positions and the number of seconded workers, secondment period, amount and payment method of labor remuneration and social insurance premiums and default liability.

A secondment employer shall determine the secondment period with the labor secondment unit according to the actual needs of the job positions and shall not enter into several short-term labor secondment agreements by subdividing the secondment period.

Article 60 Labor secondment units shall notify seconded workers of the contents of the labor secondment agreement.

A labor secondment unit shall not deduct any amount from the labor remuneration paid by the secondment employer to a seconded worker pursuant to the labor secondment agreement.

Labor secondment units and secondment employers shall not collect monies from seconded workers.

Article 61 Where a labor secondment unit undertakes a cross-locality secondment of workers, the workers' entitlement to labor remuneration and working conditions shall comply with the standards at the location of the secondment employer.

Article 62 A secondment employer shall perform the following obligations:

- (1) implement labor standards of the State and provide the corresponding working conditions and labor protection;
- (2) notify a seconded worker of his/her work requirements and labor remuneration;
- (3) pay overtime wage and performance bonus and provide welfare incentives in relation to the job positions;
- (4) provide the requisite job training for a seconded worker on the job; and
- (5) implement a normal wage adjustment mechanism for consecutive secondment.

Secondment employers shall not arrange seconded workers to work for another employer on a sub-secondment basis.

Article 63 Seconded workers shall enjoy the right to same remuneration for same job held by the employee of the employer. Employers shall implement the same labor remuneration distribution method for seconded workers and the employer's employees who hold the same job position in the organization pursuant to the principle of same remuneration for same job. Where the employer does not have an employee who holds the same job position, the remuneration shall be determined in accordance with the labor remuneration of workers at the employer's locality who hold the same job position or similar job position.

The labor remuneration paid to the seconded worker as stated or agreed in the labor contract concluded between the labor secondment unit and the seconded worker and the labor

secondment agreement concluded between the labor secondment unit and the employer shall comply with the provisions of the preceding paragraph.

Article 64 Seconded workers shall have the right to participate in or organize a labor union of the labor secondment unit or the secondment employer pursuant to the law and to safeguard their legitimate rights and interests.

Article 65 A seconded worker may rescind a labor contract with a labor secondment unit pursuant to the provisions of Article 36 and Article 38.

Where a seconded worker falls under any of the categories stipulated in Article 39 or item (1) or item (2) of Article 40, the secondment employer may send the worker back to the labor secondment unit and the labor secondment unit may, pursuant to the relevant provisions of this Law, rescind the labor contract with the worker.

Article 66 Employment by way of labor contract is the basic employment form of enterprises in China. Employment by way of labor secondment is a supplementary form and shall only be implemented for temporary, auxiliary or alternative job positions.

Temporary job positions stipulated in the preceding paragraph shall mean job positions which exist for not more than six months; auxiliary job positions shall mean non-principal business job positions which provide services for principal business job positions; alternative job positions shall mean replacement job positions by other employees arising from the employer's employees going for full-time study or on leave for a certain period of time.

Employers shall strictly control the number of seconded employees which shall not exceed a certain percentage of their total number of employees, the specific percentage shall be stipulated by the labor administrative authorities of the State Council.

Article 67 An employer shall not set up a labor secondment unit to second workers to itself or its subordinating organizations.

Section 3 Part-Time Workers

Article 68 A part-time worker shall mean a worker who is paid on an hourly basis and who works for an employer for not more than four hours per day on average and whose working hours per week do not exceed 24 hours.

Article 69 A part-time worker and his/her employer may conclude verbal agreements.

A part-time worker may conclude a labor contract with one or more employers, provided that subsequently concluded labor contracts shall not affect the performance of previously concluded labor contracts.

Article 70 A part-time worker and his/her employer shall not agree on a probationary period.

Article 71 A part-time worker and his/her employer may, at any time, notify each other of termination of employment. Upon termination of employment, the employer is not required to pay economic damages to the worker.

Article 72 The hourly rate of a part-time worker shall not be lower than the minimum hourly wage standard stipulated by the local People's Government at the locality of the employer.

The settlement and payment cycle for labor remuneration of a part-time worker shall not exceed 15 days.

Chapter VI Supervision and Inspection

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

The labor administrative authorities of local People's Governments of county level and above shall be responsible for supervision and administration of the labor contract system within their respective administrative region.

The labor administrative authorities of local People's Governments of county level and above shall, in the process of supervision and administration of the implementation of the labor contract system, seek the opinions of labor unions, enterprise representatives and the relevant industry administration authorities.

Article 74 The labor administrative authorities of local People's Governments of county level and above shall carry out supervision and administration of the following implementation status of the labor contract system:

- (1) the formulation of rules which directly involves the vital interests of workers by employers and the implementation thereof;
- (2) the conclusion and rescission of labor contracts between employers and workers;
- (3) compliance with the relevant provisions on labor secondment by labor secondment units and secondment employers;
- (4) compliance with the provisions of the State on working hours, rest period and off days of workers by employers;
- (5) payment by employers of labor remuneration stipulated in labor contracts and execution of minimum wage standard;

(6) participation by employers in various social insurance schemes and payment of social security premiums; and

(7) any other labor surveillance matters stipulated by the laws and regulations.

Article 75 The labor administrative authorities of local People's Governments of county level and above shall, when implementing supervision and inspection, have the right to inspect materials related to labor contracts and collective contracts, conduct onsite inspection at work premises; employers and workers shall provide the relevant information and materials truthfully.

Personnel of labor administrative authorities shall show their identity pass when carrying out supervision and inspection and shall exercise their duties and carry out civilized enforcement pursuant to the law.

Article 76 The relevant departments of People's Governments of county level and above responsible for supervision and administration of construction, health and work safety etc. shall, pursuant to their respective scope of duties, carry out supervision and administration of implementation of the labor contract system by employers.

Article 77 A worker whose legitimate rights and interests are infringed shall have the right to request the relevant authorities to handle the case pursuant to the law or the right to apply for arbitration or file a lawsuit pursuant to the law.

Article 78 Labor unions shall safeguard the legitimate rights and interests of workers pursuant to the law and supervise the performance of labor contracts and collective contracts by employers. Where an employer violates the labor laws and regulations or a labor contract or collective contract, the labor union shall have the right to give opinion or require rectification; where a worker applies for arbitration or files a lawsuit, the labor union shall provide support and assistance pursuant to the law.

Article 79 Any organization or individual shall have the right to report any violation of this Law; the labor administrative authorities of People's Governments of county level and above shall promptly investigate and deal with the matter and provide incentives for valid informers.

Chapter VII Legal Liability

Article 80 Where the rules formulated by an employer which directly involves the vital interests of workers violate the provisions of laws and regulations, the labor administrative authorities shall order the employer to make correction and give a warning; where a worker suffers damages thereto, the employer shall bear compensation liability.

Article 81 Where the template of a labor contract provided by an employer does not contain the essential clauses of a labor contract stipulated in this Law or where an employer fails to provide a worker with a copy of the labor contract, the labor administrative authorities shall order the employer to make correction; where the worker suffers damages thereto, the employer shall bear compensation liability.

Article 82 Where an employer fails to conclude a labor contract with a worker within the period of more than one month but less than one year from the date of commencement of work, the employer shall pay the worker double wages each month.

Where an employer violates the provisions of this Law in failing to conclude a non-fixed-term labor contract with a worker, the employer shall pay the worker double wages each month with effect from the date of conclusion of non-fixed-term labor contract.

Article 83 Where an employer violates the provisions of this Law in agreement with a worker on probationary period, the labor administrative authorities shall order the employer to make correction; where the probationary period agreed in violation of the law has been performed, the employer shall pay compensation to the worker based on the monthly wage of the worker upon expiry of the probationary period for the excess probationary period performed.

Article 84 Where an employer violates the provisions of this Law in retaining the identity card etc. of a worker, the labor administrative authorities shall order the employer to return the identity card etc. to the worker within a stipulated period and shall mete out punishment pursuant to the relevant provisions of the law.

Where an employer violates the provisions of this Law in collection monies from a worker in the name of guarantee or any other pretext, the labor administrative authorities shall order the employer to return the monies to the worker within a stipulated period, and the employer shall be subject to a fine ranging from RMB500 to RMB2,000 per person; where a worker suffers damages thereto, the employer shall bear compensation liability.

Where an employer retains the files or any other articles of a worker following rescission or termination of a labor contract by the worker pursuant to the law, the employer shall be punished pursuant to the provisions of the preceding paragraph.

Article 85 Under any of the following circumstances, the labor administrative authorities shall order the employer to pay labor remuneration, overtime wage or economic damages within a stipulated period; where the labor remuneration is lower than the minimum wage standard at the locality, the shortfall shall be paid; where payment is not made within the stipulated period, the employer shall be ordered to pay compensation to the worker based on 50% to 100% of the amount payable:

(1) the employer fails to pay labor remuneration to a worker pursuant to the provisions of the labor contract or fails to promptly pay labor remuneration in full amount pursuant to the provisions of the State;

- (2) the employer pays a worker wages below the minimum wage standard at the locality;
- (3) the employer does not pay overtime wages for overtime work; or
- (4) the employer rescinds or terminates a labor contract but fails to pay economic damages to the worker pursuant to the provisions of this Law.

Article 86 Where a labor contract is deemed invalid pursuant to the provisions of Article 26 and a party suffers damage thereto, the party at fault shall bear compensation liability.

Article 87 An employer which violates the provisions of this Law in rescission or termination of a labor contract shall pay compensation to the worker at two times the economic damages stipulated in Article 47.

Article 88 Under any of the following circumstances, the employer shall be subject to administrative punishment pursuant to the law; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law; where a worker suffers damages, the employer shall bear compensation liability:

- (1) the employer uses means such as violence, threat or illegal restriction of personal freedom to coerce a worker into provision of labor;
- (2) the employer gives orders which violate the rules or force a worker to engage in risk work which endangers the worker's personal safety;
- (3) the worker is subject to humiliation, physical punishment, beating, illegal searches or detention by the employer;
- (4) bad working conditions and severe environmental pollution which causes the worker to suffer serious damages to physical and mental health.

Article 89 Where an employer violates the provisions of this Law in failing to show written proof of rescission or termination of labor contract to the worker, the labor administrative authorities shall order the employer to make correction; where the worker suffers damages thereto, the employer shall bear compensation liability.

Article 90 Where a worker violates the provisions of this Law in rescission of labor contract or violates the provisions of a labor contract on confidentiality obligation or non-competition restrictive covenant and causes the employer to suffer damages, the worker shall bear compensation liability.

Article 91 Where an employer employs a worker who has not rescinded or terminated his/her labor contract with the existing employer and causes the existing employer to suffer damages, the employer shall bear compensation liability jointly and severally.

Article 92 Persons who violate the provisions of this Law to engage in unauthorized labor secondment business without a license shall be ordered by the labor administrative authorities to stop the illegal act, illegal income shall be confiscated and a fine ranging from one to five times the amount of illegal income shall be imposed; where there is no illegal income, a fine of not more than RMB50,000 may be imposed.

Labor secondment units and employers which violate the provisions of this Law on labor secondment shall be ordered by the labor administrative authorities to make correction within a stipulated period; where correction is not made within the stipulated period, a fine ranging from RMB5,000 to RMB10,000 per person shall be imposed, and the labor secondment business permit of the labor secondment unit shall be revoked. In the event that an employer has caused a seconded worker to suffer damages, the labor secondment unit and the employer shall bear compensation liability jointly and severally.

Article 93 For illegal acts and crimes committed by employers which do not possess legitimate business qualifications, legal liability shall be pursued in accordance with the law; where a worker has provided labor services, the unit or its capital contributory(ies) shall pay labor remuneration, economic damages and compensation to the worker pursuant to the relevant provisions of this Law; and shall bear compensation liability if a worker suffers damages thereto.

Article 94 Where an individual contractor violates the provisions of this Law in recruiting workers and the workers suffer damages thereto, the organization which awards the contract and the individual contractor shall bear compensation liability jointly and severally.

Article 95 Labor administrative authorities and the relevant authorities and their personnel that are guilty of dereliction of duties, non-performance of statutory duties or exercise of official powers in violation of law which cause a worker or an employer to suffer damages shall bear compensation liability; person(s)-in-charge and other directly accountable personnel shall be subject to administrative punishment; where the case constitutes criminal offence, criminal liability shall be pursued in accordance with the law.

Chapter VIII Supplementary Provisions

Article 96 Where the laws and administrative regulations or the State Council provide otherwise for the conclusion, performance, variation, rescission or termination of labor contracts between institutions with their staff under the existing employment scheme, such provisions shall prevail; where there are no provisions, the relevant provisions of this Law shall prevail.

Article 97 Existing labor contracts concluded pursuant to the law prior to the implementation of this Law and valid as of the date of implementation of this Law shall continue to be performed; the number of instances of consecutive conclusion of fixed-term labor contracts

stipulated in item (3) of the 2nd paragraph of Article 14 shall be computed with effect from the renewal of fixed-term labor contracts following the implementation of this Law.

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

Where a labor contract valid as of the date of implementation of this Law is rescinded or terminated following the implementation of this Law and whereby economic damages shall be paid pursuant to the provisions of Article 46, the duration for economic damages shall commence from the date of implementation of this Law; where an employer is required to pay economic damages to a worker pursuant to the relevant provisions prevailing before the implementation of this Law, such relevant prevailing provisions shall be complied with.

Article 98 This Law shall be effective 1 January 2008.