

## **Labor Contract Law of the People's Republic of China**

发文日期 06-29-2007

内容分类 Employment & Labor Law

发文机关 the Standing Committee of the National People's Congress

文号 Order of the President [2007] No. 65

时效性 Effective

生效日期 2008-01-01

有效范围 National

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The Labor Contract Law of the People's Republic of China was 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 is hereby promulgated and effective as of January 1, 2008.

President of the People's Republic of China: Hu Jin-tao

Labor Contract Law of the People's Republic of China

(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)

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### **Chapter I General Provisions**

Article 1 This Law is formulated to improve the labor contract system, specify the rights and obligations of both parties to labor contracts, protect the lawful rights and interests of laborers and establish and develop a stable and harmonious labor relationship.

Article 2 This Law shall apply to the conclusion, performance, change, dissolution or termination of labor contracts through the establishment of labor relationships between institutions such as enterprises, individually-owned economic organizations and private non-enterprise work units within the territory of the People's Republic of China (hereinafter referred to as employing units) and laborers.

The conclusion, performance, change, dissolution or termination of labor contracts by state authorities, institutions, social organizations and laborers with which they have a labor relationship shall refer to this Law.

Article 3 The conclusion of labor contracts shall comply with the principles of lawfulness, fairness, equality and willingness, consensus consultation and faithfulness and creditworthiness.

Labor contracts that are lawfully concluded shall be legal binding. Employing units and laborers shall perform the obligations agreed in labor contracts.

Article 4 An employing unit shall lawfully establish and improve rules and systems, protect the labor rights enjoyed by laborers and perform labor obligations.

Where an employing unit formulates, amends or decides on rules and systems that are directly related to the personal benefits of laborers or important matters such as labor rules and systems, working hours, rest days, labor safety and health, insurance benefits, employee training, labor discipline and labor quota administration, it shall hold a discussion with employees' assembly or all employees, submit proposals and give suggestions and determine the issue following fair consultation with labor unions or employees' representatives.

In the process of decision-making and implementation of rules and systems and important matters, where a labor unions or employee deems it improper, it shall have the right to raise the issue to employing units and amendments and improvements shall be made through consultation.

The employing unit shall publicly announce the rules and systems that are directly related to the personal benefits of laborers or the decisions on important matters, or inform the laborers of such rules and systems and decisions.

Article 5 The labor administrative department of the people's government at the county level or above and labor unions and representatives of enterprises shall establish a sound three-party mechanism for coordinating labor relationships and jointly study and solve important issues relevant to labor relationships.

Article 6 A labor union shall assist and guide laborers to lawfully conclude and perform labor contracts with employing units and establish a collective consultation mechanism with employing

units, and protect the lawful rights and interests of laborers.

## **Chapter II Conclusion of Labor Contracts**

Article 7 An employing unit has established labor relationships with laborers from the date of use of labor services. The employing unit shall establish a register of employees for inspection.

Article 8 Where an employing unit employs laborers, it shall truly inform the laborers of the job specifications, working conditions, place of work, occupational hazards, safe production status and labor remuneration, and other circumstances requested to be informed by the laborers. The employing unit shall have the right to understand the basic circumstances directly related to the laborers and labor contracts, and the laborers shall give a true explanation.

Article 9 Where an employing unit employs laborers, it may not detain the resident identity card and other documents of laborers, nor request the laborers to provide guarantee or collect property from laborers in other names.

Article 10 Written labor contracts shall be concluded to establish labor relationships.

Where labor relationship has been established but no written labor contract was concluded at the same time, the written labor contract shall be concluded within one month of the date of use of labor services.

Where the employing unit and laborers conclude labor contracts before the use of labor services, the labor relationships shall be established from the date of use of labor services.

Article 11 Where an employing unit has not established a written labor contract at the same time as the use of labor services, and the labor remuneration has not been specified with the laborers, the labor remuneration of laborers newly employed shall be subject to the standard of the provisions of collective contracts. Where there is no collective contract or there is no provision in the collective contract, equal remuneration for the same work shall be paid.

Article 12 Labor contracts are divided into labor contracts with fixed terms, labor contracts with unfixed terms and labor contracts where the term of service equals to the period of completion of a certain task.

Article 13 Labor contracts with fixed terms shall refer to labor contracts the termination date of which is agreed between employing units and laborers.

Where employing units and laborers have reached a consensus after consultation, they may conclude labor contracts with fixed terms.

Article 14 Labor contracts with unfixed terms shall refer to labor contracts the termination date of which is not agreed between employing units and laborers.

Where an employing unit and a laborer have reached a consensus after consultation, they may conclude a labor contract with unfixed terms. In any of the following circumstances where the laborer requests or agrees to renew or conclude labor contracts, the labor contract with unfixed terms shall be concluded unless laborers request the conclusion of a labor contract with fixed terms:

- (1) The laborer has been working with the employing unit for 10 consecutive years;
- (2) Where the employing unit implements the labor contract system for the first time or labor contracts are re-concluded due to restructuring of state-owned enterprises, the laborer has been working with the employing unit for 10 consecutive years and there is less than 10 years before the statutory retirement age; or
- (3) Where a labor contract with fixed terms has been concluded for two consecutive times and no labor contract is renewed for laborers that do not fall within the circumstances specified in Items (1) and (2) of Articles 39 and 40 hereof.

Where the employing unit fails to conclude a written labor contract with the laborer from one year of the use of labor services, the labor contract with unfixed terms shall be deemed to have been established between the employing unit and the laborer.

Article 15 Labor contracts where the term of service equals to the period of completion of a certain task shall refer to labor contracts where the term of service is agreed by an employing unit and a laborer to be the period of completion of a certain task.

Where the employing unit and the laborer have reached a consensus after consultation, they may conclude a labor contract where the term of service equals to the period of completion of a certain task.

Article 16 An employing unit and a laborer shall reach a consensus after consultation on the labor contract which shall be effective after signing and fixing a seal on the text of the labor contract by the employing unit and the laborer.

The employing unit and the laborer shall each keep a copy of the text of the labor contract.

Article 17 A labor contract shall contain the following terms and conditions:

- (1) The name, domicile and the legal representative or the major responsible person of the employing unit;
- (2) The name, domicile and the number of resident identity card or of other valid identity document of the laborer;
- (3) The term of the labor contract;
- (4) The job specifications and the place of work;
- (5) The working hours and rest days;

- (6) Labor remuneration;
- (7) Social insurance;
- (8) Labor protection, labor conditions and protection against occupational hazards; and
- (9) Other matters that shall be included in the labor contract as required by laws and regulations.

In addition to the essential provisions of the labor contract provided in the preceding paragraph, the employing unit and the laborer may agree on other matters such as the probationary period, training, maintenance of confidentiality, supplementary insurance and fringe benefits.

Article 18 Where the labor remuneration and labor conditions are not specified in the labor contract and a dispute arises, the employing unit and the laborer may hold a new consultation. If the consultation fails, the provisions of the collective contract shall apply. Where there is no collective contract or where no provision of labor remuneration is contained herein, equal remuneration for the same work shall be paid. Where there is no collective contract or there is no provision on labor conditions contained herein, the relevant state provisions shall apply.

Article 19 Where the term of the labor contract is over three months but less than one year, the probationary period shall not exceed one month. Where the labor contract is over one year but less than three years, the probationary period shall not exceed two months. The probationary period of the labor contract with a fixed term of three years or unfixd term shall not exceed six months.

Article 20 The wages of the laborer in the probationary period may not be lower than the lowest wages of the same position in the employing unit or 80% of the wages agreed in the labor contract, and may not be lower than the local lowest wage standard of the employing unit.

Article 21 In the probationary period, an employing unit may not dissolve the labor contract unless the laborer is under the circumstances prescribed in Article 39 and Items (1) and (2) of Article 40 hereof. Where the employing unit dissolves the labor contract during the probationary period, the laborer shall be informed of the reasons.

Article 22 Where an employing unit provides special training fees to a laborer for training on special skills, it may conclude an agreement with the laborer and agree on the term of service.

Where the laborer violates the agreements of the term of service, it shall pay liquidated damages to the employing unit. The amount of the liquidated damages may not exceed the training fees provided by the employing unit. The liquidated damages that the employing unit requires the laborer to pay may not exceed the training fees that shall be apportioned in the non-performance period of the term of service.

Where the employing unit and the laborer agree on the term of service, the increment of labor remuneration of the laborer in the service period according to the normal wage adjustment mechanism shall not be affected.

Article 23 An employing unit and a laborer may agree on the maintenance of the confidentiality of

trade secrets of the employing unit and the confidentiality matters relevant to intellectual property rights in the labor contract.

In relation to the laborer who has the confidentiality obligation, the employing unit may agree on the competitive restriction clause with the laborer in the labor contract or the confidentiality agreement, and agree on the monthly economic compensation payable to the laborer within the competitive restriction period after the dissolution or termination of the labor contract. Where the laborer violates the agreement of the competitive restriction, it shall pay liquidated damages to the employing unit in accordance with agreements.

Article 24 The personnel subject to the competitive restriction shall be limited to senior management personnel, senior technical personnel and other personnel with confidentiality obligation of the employing unit. The scope, geographic region and time limit of restrictive competition shall be agreed by the employing unit and the laborer and the agreement of restrictive competition may not violate the provisions of laws and regulations.

After the dissolution or termination of the labor contract, the time limit of restrictive competition of the personnel prescribed in the preceding paragraph for working in other employing units that manufacture or operate the same type of products or that engage in the same type of business having competitive relationship with the original employing unit, or for commencing its own business in manufacturing or operating the same type of products and engaging in the same type of business shall not exceed two years.

Article 25 Unless in the circumstances prescribed in Articles 22 and 23 hereof, no employing unit may agree with the laborer on the full responsibility of liquidated damages by the laborer.

Article 26 The following labor contracts are invalid or partly invalid:

- (1) Conclude or change the labor contract in violation of the true meaning of the party by deceptive means or threats, or taking advantage of the party's precarious position;
- (2) Exempt the employing unit from the statutory responsibility by itself or exclude the rights of laborers; and
- (3) Violate the mandatory provisions of laws and administrative regulations.

Where there is a dispute over the invalidity or partial invalidity of a labor contract, it shall be confirmed by the labor dispute arbitration authority or the people's court.

Article 27 Where a labor contract is partially invalid and does not affect the validity of other parts, such other parts shall still be valid.

Article 28 Where a labor contract is confirmed to be invalid, and the laborer has provided labor services, the employing unit shall still pay labor remuneration to the laborer. The amount of labor

remuneration shall be confirmed with reference to the labor remuneration of the laborer of the same or similar position in the employing unit.

### **Chapter III Performance and Change of Labor Contracts**

Article 29 An employing unit and a laborer shall fully perform their respective obligations in accordance with the agreements of the labor contract.

Article 30 An employing unit shall timely pay labor remuneration in full to the laborer in accordance with the agreements of the labor contract and state provisions.

Where the employing unit is in default of labor remuneration or does not pay labor remuneration in full, the laborer may apply to the local people's court for a payment order in accordance with the law and the people's court shall issue the payment order in accordance with the law.

Article 31 The employing unit shall strictly implement the labor quota standard and may not threaten or threaten the laborer to work overtime in disguise. Where the employing unit arranges for overtime work, it shall make overtime payment to the laborer in accordance with the relevant state provisions.

Article 32 Where a laborer refuses to follow the instructions that do not comply with regulations of the management personnel of the employing unit or refuses dangerous operation, it shall not be deemed as violation of the labor contract.

The laborer shall have the right to make criticism, report and bring a charge against the employing unit in respect of labor conditions endangering the safety of life and physical health.

Article 33 Where an employing unit changes its name, legal representative, major responsible person or investors, the performance of the labor contract shall not be affected.

Article 34 Where there is a merger or division of an employing unit, the original labor contract shall continue to be valid and the labor contract shall be performed continuously by the employing unit that succeeds its rights and obligations.

Article 35 An employing unit and a laborer may change the content agreed in the labor contract after reaching a consensus through consultation. The change of labor contract shall be in writing.

A copy of the text of the labor contract after change shall be kept by the employing unit and the laborer respectively.

### **Chapter IV Dissolution and Termination of Labor Contracts**

Article 36 Where an employing unit and a laborer have reach a consensus after consultation, they may dissolve the labor contract.

Article 37 A laborer may dissolve the labor contract by giving the employing unit prior notice of 30 days in writing. The laborer may dissolve the labor contract within the probationary period by giving the employing unit three days of prior notice.

Article 38 A laborer may dissolve a labor contract when the employing unit is under any of the following circumstances:

- (1) Fails to provide labor protection or labor conditions in accordance with the agreements of the labor contract;
- (2) Fails to timely pay labor remuneration in full;
- (3) Fails to pay social insurance premiums for the laborer in accordance with the law;
- (4) The rules and systems of the employing unit violate laws and regulations and the rights of the laborers are harmed;
- (5) The labor contract is invalid due to the circumstances prescribed in Paragraph One of Article 26 hereof; or
- (6) Other circumstances where laborers may dissolve labor contracts according to the provisions of laws and administrative regulations.

Where the employing unit coerces laborers into provision of labor services by means of violence, threat or illegal restriction of personal freedom, or the employing unit gives instructions in violation of regulations or endangers the personal safety of laborers by dangerous operations, the laborer may immediately dissolve the labor contract without the need of giving prior notice to the employing unit.

Article 39 An employing unit may dissolve the labor contract where the laborer is in any of the following circumstances:

- (1) The laborer is confirmed to fail to meet the employment conditions in the probationary period;
- (2) The laborer is in serious violation of the rules and systems of the employing unit;
- (3) The laborer is in serious dereliction of duty or practices graft which brings about significant harm to the employing unit;
- (4) The laborer establishes labor relationships with other employing units at the same time that brings about serious impact on the completion of tasks of the employing unit, or the laborer fails to make rectification after the employing unit informs it of the issue;
- (5) The labor contract is invalid in the circumstances prescribed in Item 1 of Paragraph One of

Article 26 hereof; or

(6) Criminal liability is pursued against the laborer in accordance with the law.

Article 40 In any of the following circumstances, an employing unit may dissolve the labor contract by giving the laborer a prior written notice of 30 days or pay the laborers an additional month of wages:

(1) The laborer is sick or injured due to reasons unrelated to work, and fails to perform the original work after the prescribed treatment period or fails to perform other work arranged by the employing unit;

(2) The laborer is not qualified for the job, and after training is given or the position is changed, the laborer still fails to be qualified for the job;

(3) There is a significant change to the objective circumstances on which the conclusion of the labor contract is based, leading to the non-performance of the labor contract, and after the consultation between the employing unit and the laborer, no agreement can be reached in respect of the change of the content of the labor contract.

Article 41 In any of the following circumstances, where there is a need to make 20 or more personnel redundant or make less than 20 personnel redundant but they account for more than 10% of the total number of laborers, the employing unit shall report to the labor union or all laborers 30 days in advance to solicit the opinions of the labor union or laborers. Personnel may be made redundant after the redundancy plan is reported to the labor administrative department where:

(1) The employing unit is restructured in accordance with the provisions of the Enterprise Bankruptcy Law;

(2) There is a serious difficulty in production and operation;

(3) There is a change of production, reform of significant technology or adjustment of the mode of operation of the enterprise, redundancy shall still be made after the change of labor contracts;

(4) There is a significant change to the objective circumstances on which the conclusion of the labor contract is based, leading to the non-performance of the labor contract.

To make personnel redundant, the following personnel shall be retained in priority:

(1) the personnel who have concluded a labor contract with fixed terms of a relatively longer period with the employing unit;

(2) the personnel have concluded labor contracts with unfixed terms with the employing unit;

(3) there is no other personnel in the family who is in employment and there is a need to financially support the elderly or the underage.

Where the employing unit makes personnel redundant in accordance with Paragraph One of this article, it shall inform the personnel that have been made redundant if recruitment of personnel is required within six months and the personnel that are made redundant shall be employed on the same terms in priority.

Article 42 Where the laborer is in any of the following circumstances, the employing unit may not dissolve the labor contract in accordance with Articles 40 and 41 hereof:

(1) Where the laborer engaging in operations with exposure to occupational hazards has not been performed occupational health inspection before vacation of the post or the patient with suspected occupational disease is under diagnosis or medical observation;

(2) Where the laborer is contracted with occupational disease or is injured due to work-related reasons and is confirmed to suffer from incapacity or partial incapacity;

(3) Where the laborer is sick or injured for reasons unrelated to work, and it is in the prescribed treatment period;

(4) Where the female laborer is in pregnancy, maternity or nursing period;

(5) Where the laborer has been in continuous employment for 15 years and whose statutory retirement age is less than 5 years; or

(6) Other circumstances prescribed by laws and administrative regulations.

Article 43 Where an employing unit dissolves the labor contract unilaterally, it shall inform the labor union of the reasons therefor in advance. Where the employing unit violates the provisions of laws and administrative regulations or the agreements of the labor contract, the labor union shall have the right to require the employing unit to make rectification. The employing unit shall take into consideration the opinions of the labor union and inform the labor union of the result of handling in writing.

Article 44 A labor contract is terminated in any of the following circumstances:

(1) The labor contract expires;

(2) The laborer starts enjoying the basic old-age insurance in accordance with the law;

(3) The laborer is dead, or is declared death or missing by the people's court;

- (4) The employing unit is declared bankrupt in accordance with the law;
- (5) The employing unit whose business license is revoked, is ordered for disclosure, shut down or the employing unit decides to dissolve earlier; or
- (6) Other circumstances prescribed by laws and administrative regulations.

Article 45 Where the labor contract expires and it is in the circumstances prescribed in Article 42 hereof, the labor contract shall be extended, and terminated until the non-existence of the corresponding circumstances. However, in respect of the termination of the labor contract of the laborer that is incapable or partly incapable under the provisions of Item 2 of Article 42 hereof, the relevant provisions of work-related injury insurance of the state shall follow.

Article 46 In any of the following circumstances, an employing unit shall make economic compensation to a laborer:

- (1) The laborer dissolves the labor contract in accordance with the provisions of Article 38 hereof;
- (2) The employing unit dissolves the labor contract of the laborer and reaches a consensus with the laborer after consultation in accordance with Article 36 hereof;
- (3) The employing unit dissolves the labor contract in accordance with Article 40 hereof;
- (4) The employing unit dissolves the labor contract in accordance with Item 1 of Article 41 hereof;
- (5) The labor contract with fixed terms is terminated in accordance with Item 1 of Article 44 hereof unless the laborer disagrees with the renewal of contract where the employing unit maintains or raises the conditions of the agreements of the labor contract;
- (6) The labor contract is terminated in accordance with the provisions of Items 4 and 5 of Article 44 hereof;
- (7) Other circumstances prescribed by laws and administrative regulations.

Article 47 The economic compensation shall be made to a laborer pursuant to the years of service of the laborer in the employing unit on the basis of the standard of one month of wages for one full year of service. If a laborer is employed for more than six months but less than one year, it shall be treated as one year. If a laborer is employed for less than six months, economic compensation of half a month of wages shall be made thereto.

Where the monthly wages of a laborer is three times more than the average monthly wages of employees of the previous year of the locality announced by the people's governments of municipalities directly under the central government and municipalities with districts in which the employing units locates, the employing unit shall make an economic compensation to the laborer

at the standard of three times of the average monthly wages of employees, and the maximum year of economic compensation made shall not exceed 12 years.

For the purposes of this article, the term monthly wages refers to the average wages of a laborer within 12 months of dissolution or termination of labor contracts.

Article 48 Where an employing unit dissolves or terminates a labor contract in violation of the provisions hereof, and the laborer requests the continuous performance of the labor contract, the employing unit shall continue to perform. Where the laborer does not require the continuous performance of the labor contract or the labor contract cannot be performed continuously, the employing unit shall pay compensation in accordance with Article 87 hereof.

Article 49 The state shall adopt measures to establish a sound cross-region transfer and succession system of insurance relationships of laborers.

Article 50 An employing unit shall issue the proof of dissolution or termination of the labor contract at the time of its dissolution or termination, and handle the transfer procedure for archives and social insurance for laborers.

A laborer shall hand over the work in accordance with the agreements of both parties. Where the employing unit makes economic compensation to the laborer in accordance with the relevant provisions hereof, such economic compensation shall be made in the handover of work.

The employing unit shall retain the text of the labor contracts that are dissolved or terminated for at least two years for inspection.

## **Chapter V Special Provisions**

### **Section 1 Collective Contracts**

Article 51 The employees of enterprises may conclude collective contracts on matters such as labor remuneration, working hours, rest days, labor safety and health and insurance benefits with the employing unit through fair consultation. The draft of the collective contract shall be submitted to the employees' assembly or all employees for deliberation and adoption.

The collective contract shall be concluded by the labor union on behalf of employees of enterprises with the employing unit. Where there is no labor union in the employing unit, the labor union at a higher level shall guide the representative selected by the labor union to conclude the collective contract with the employing unit.

Article 52 The employees of enterprises may conclude special collective contracts in labor safety and health, protection of rights and interests of female employees and wage adjustment mechanism with the employing unit.

Article 53 In respect of the regions below the county level, the labor union and the representative of the enterprise may conclude industrial collective contract or regional collective collection for industries such as the construction industry, the mining industry and the beverage industry.

Article 54 The labor contract concluded shall be submitted to the labor administrative department. The collective contract shall become effective if the labor administrative department has no opposing opinion upon 15 days of the receipt of the text of the collective contract.

The collective contract lawfully concluded shall be binding on the employing unit and the laborers. The industrial and regional collective contracts shall be binding on the employing unit and the laborers of the same industry and the same region.

Article 55 The labor remuneration and the labor conditions of the collective contract shall not be lower than the lowest standard prescribed by the local people's government. The labor remuneration and the labor conditions of the labor contract concluded by the employing unit and the laborer shall not be lower than the standard prescribed by the collective contract.

Article 56 Where an employing unit violates the collective contract and infringes on the labor rights and interests of employees, the labor union may request the employing unit to assume liability in accordance with the law. Where a dispute arises from the performance of the collective contract and no agreement is reached after consultation, the labor union may apply for arbitration or initiate litigation in accordance with the law.

## Section 2 Labor Dispatch

Article 57 Labor dispatch units shall be established in accordance with the relevant provisions of the Company Law, the registered capital may not be less than RMB 50 thousand.

Article 58 A labor dispatch unit shall be the employing unit to which this Law refers, and shall perform the obligations of the employing unit to the laborers. The labor contract concluded by the labor dispatch unit and the dispatched laborers shall, in addition to the matters prescribed in Article 17 hereof, also set out the labor service unit of the dispatched laborers and the time limit of dispatch and the work position.

The labor dispatch unit shall conclude a labor contract with a fixed term of more than two years with the dispatched laborers and make labor remuneration on a monthly basis. In the period where the dispatched laborers are jobless, the labor dispatch unit shall pay monthly remuneration in accordance with the lowest wage standard prescribed by the local people's government.

Article 59 Where a labor dispatch unit dispatches laborers, it shall conclude a labor dispatch agreement with the unit that accepts labor services in the form of labor dispatch (hereinafter referred to as the labor service unit). The labor dispatch agreement shall agree on the dispatch positions and the number of personnel, the time limit of dispatch, the labor remuneration, the amount and payment method of social insurance and the liability for violation of the agreement.

The labor service unit shall confirm the time limit of dispatch with the labor dispatch unit subject to the actual need of the position, and shall not conclude several short-term labor dispatch agreements by dividing a consecutive labor service period.

Article 60 A labor dispatch unit shall inform the dispatched laborers of the content of the labor dispatch agreement.

The labor dispatch unit may not withhold the labor remuneration paid to the dispatched laborers by the labor service unit in accordance with the labor dispatch agreement.

The labor dispatch unit and the labor service unit may not collect fees from the dispatched laborers.

Article 61 Where the labor dispatch unit dispatches laborers across regions, the labor remuneration and the labor conditions enjoyed by the dispatched laborers shall follow the standard in which the labor service unit locates.

Article 62 A labor service unit shall perform the following obligations:

- (1) Implements the state labor standards and provides the corresponding labor conditions and labor protection;
- (2) Informs the dispatched laborers of the job requirements and the labor remuneration;
- (3) Makes overtime payment, incentive bonus and provides the fringe benefits commensurate with the position;
- (4) Conducts the training necessary for the job to the serving dispatched laborer; and
- (5) Implements the normal wage adjustment mechanism for consecutive labor services.

No labor service unit may dispatch the dispatched laborers to other employing units.

Article 63 A dispatched laborer shall have the right of enjoying the same remuneration as the laborers of the labor service unit in the same capacity. Where the labor service unit does not have laborers in the same capacity, reference shall be made to the labor remuneration of laborers in the same or similar capacity in which the labor service unit locates.

Article 64 A dispatched laborer shall have the right to participate in or organize a labor union of the labor dispatch unit or the labor service unit to protect his lawful rights and interests.

Article 65 A dispatched laborer may dissolve the labor contract with the labor dispatch unit in accordance with the provisions of Article 36 and 38 hereof.

Where the dispatched laborer is under the circumstances of Article 39 and Items 1 and 2 of Article 40 hereof, the labor service unit may send the laborer back to the labor dispatch unit. The labor dispatch unit may dissolve the labor contract with the laborer in accordance with the relevant provisions hereof.

Article 66 Labor dispatch shall normally apply to temporary, ancillary or substitute positions.

Article 67 No labor service unit may establish a labor dispatch unit to dispatch laborers to itself or to any attached units.

### Section 3 Part-time Labor Services

Article 68 Part-time labor services shall refer to the form of labor service whereby remuneration is calculated on an hourly basis and laborers do not normally work more than four hours on average on a daily basis in the same labor service unit and the accumulative working hours per week does not exceed 24 hours.

Article 69 The parties to part-time labor services may conclude oral agreements.

Laborers engaging in part-time labor services may conclude labor contracts with one or more employing units. However, the labor contracts concluded at a subsequent date may not affect the performance of the labor contracts concluded at an earlier date.

Article 70 No probationary period may be agreed by the parties to part-time labor services.

Article 71 Either party to the part-time labor services may inform the other party of termination of labor services at any time. If the labor services are terminated, the employing unit may not pay economic remuneration to the laborer.

Article 72 The calculation standard of hourly remuneration for part-time labor services may not be lower than the lowest hourly wage standard prescribed by the local people's government in which the employing unit locates.

The cycle for settlement and payment of part-time labor services shall not exceed 15 days at maximum.

## **Chapter VI Supervision and Examination**

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

The labor administrative departments of local people's governments at the county level or above shall be responsible for the supervision and administration of the implementation of the labor

contract system in the respective administrative regions.

The labor administrative departments of local people's governments at the county level or above shall, in the supervision and administration of the implementation of the labor contract system, listen to the opinions of labor unions, enterprise representatives and the departments in charge of the relevant industries.

Article 74 The labor administrative departments of local people's governments at the county level or above shall supervise and examine the following circumstances in respect of the implementation of the labor contract system:

- (1) Where the employing unit formulates rules and systems that are directly related to the personal benefits of laborers and the implementation thereof;
- (2) Where the employing unit and the laborer conclude and dissolve labor contracts;
- (3) The compliance of the relevant provisions of labor dispatch by labor dispatch units and labor service units.
- (4) The compliance of the provisions on the working hours and rest days of laborers of the state by labor dispatch units;
- (5) The payment of labor remuneration in accordance with the agreements of labor contracts by the employing unit and the implementation of the lowest wage standard;
- (6) The participation in various social insurance and payment of social insurance premiums by the employing unit;
- (7) Other labor supervision matters prescribed by laws and regulations.

Article 75 During supervision and examination, labor administrative departments of local people's governments at the county level or above shall have the right to inspect the materials relevant to the labor contract and the collective contract and to conduct on-site inspection of the place of work, and the employing unit and laborers shall truthfully provide the relevant circumstances and materials.

Article 76 The relevant departments in charge of the people's governments at the county level or above such as construction, health, safe production and supervision and administration shall exercise supervision and administration of the implementation of the labor contract system by the employing unit.

Article 77 Where the lawful rights and interests of laborers are infringed, they shall have the right to request the handling by the relevant department in accordance with the law, or apply for arbitration or initiate litigation in accordance with the law.

Article 78 Labor unions shall protect the lawful rights and interests of laborers and exercise supervision on the performance of labor contracts and collective contracts by employing units. Where an employing unit violates labor laws, regulations, labor contracts and collective contracts, a labor union shall have the right to give opinions or request for rectification. Where a laborer applies for arbitration or initiates litigation, the labor union shall offer support and assistance in accordance with the law.

Article 79 All organizations or individuals shall have the right to report any acts in violation of this Law, and the labor administrative departments of local people's governments at the county level or above shall timely verify and handle and award the personnel who have made the report.

## **Chapter VII Legal Liability**

Article 80 Where the rules and systems of an employing unit that are directly related to the personal benefits of laborers violate the provisions of laws and regulations, the labor administrative department shall order rectification and issue a warning. If harm is done to laborers, it shall assume compensation liability.

Article 81 Where the text of the labor contract provided by an employing unit does not set out the essential provisions of a labor contract prescribed by this Law or the employing unit has not given the text of the labor contract to laborers, the labor administrative department shall order rectification. Where harm is done to laborers, it shall assume compensation liability.

Article 82 Where an employing unit fails to conclude a written labor contract with a laborer that has provided labor services for more than one month but less than one year, it shall pay two times of monthly wages to the laborer.

Where an employing unit violates the provisions hereof by failing to conclude a labor contract with unfixed terms, it shall pay two times of monthly wages to the laborer from the date of conclusion of the labor contract with unfixed terms.

Article 83 Where an employing unit violates the provisions hereof by agreeing on a probationary period with the laborer, the labor administrative department shall order rectification. Where the probationary period agreed in violation of the law is over, the employing unit shall pay compensation to the laborer for the period that has been performed in excess of the statutory probationary period on the basis of the standard of the monthly wages of the laborer after the probationary period.

Article 84 Where an employing unit violates the provisions hereof by detaining documents such as the resident identity card of a laborer, the labor administrative department shall order the return of such documents to the laborer within a time limit, and impose punishment in accordance with the provisions of the relevant laws.

Where an employing unit violates the provisions hereof by collecting property from a laborer in

the name of security or other names, the labor administrative department shall order the return of such property to the laborer and impose a fine of more than RMB 500 and less than RMB 2,000 per person. Where harm is done to the laborer, it shall assume compensation liability.

Where a laborer dissolves or terminates a labor contract in accordance with the law, and the employing unit detains the archives or other property of the laborer, punishment shall be imposed in accordance with the provisions of the preceding paragraph.

Article 85 Where an employing unit is under any of the following circumstances, the labor administrative department shall order the time limit for paying labor remuneration, making overtime payment or economic compensation. If the labor remuneration is lower than the local lowest wage standard, the difference shall be paid. If no payment is made after the time limit, the employing unit shall be ordered to pay additional compensation to the laborer at the standard of more than 50% and less than 100% of the payable amount:

- (1) Failure to timely pay labor remuneration in full to the laborer in accordance with the agreements of the labor contract or state provisions;
- (2) The wages of the laborer are paid lower than the local lowest wage standard;
- (3) Failure to make overtime payment after working overtime; or
- (4) Failure to make economic compensation to the laborer in accordance with the provisions hereof for dissolution or termination of labor contracts.

Article 86 Where a labor contract is confirmed to be invalid in accordance with Article 26 hereof and harm has been done to both parties, the wrongdoing party shall assume compensation liability.

Article 87 Where an employing unit violates the provisions hereof by dissolving or terminating labor contracts, compensation shall be made to the laborer at a rate of two times of the economic compensation standard prescribed by Article 47 hereof.

Article 88 Where an employing unit is under any of the following circumstances, administrative penalty shall be imposed in accordance with the law. If a crime is constituted, criminal liability shall be pursued in accordance with the law. If harm is done to laborers, it shall assume compensation liability:

- (1) Coercion into labor services by means of violence, threat or illegal restriction of personal freedom;
- (2) Giving instructions in violation of regulations or coercion to dangerous operations that endanger the personal safety of laborers;
- (3) Insult, physical punishment, battery, illegal search or detention of laborers;

(4) The labor conditions are bad and environmental protection is serious, leading to serious harm to the physical and mental health of laborers.

Article 89 Where an employing unit violates the provisions hereof by failing to issue to the laborer a written documentation for the dissolution or termination of a labor contract, the labor administrative department shall order rectification. Where harm is done to the laborer, it shall assume compensation liability.

Article 90 Where a laborer violates the provisions hereof by dissolving the labor contract, or violates the confidentiality obligation or competitive restriction agreed in the labor contract, and harm is done to the employing unit, it shall assume compensation liability.

Article 91 Where an employing unit recruits a laborer whose labor contract with another employing unit has not been dissolved or terminated, and brings about loss to another employing unit, it shall assume joint and several compensation liability.

Article 92 Where a labor dispatch unit violates the provisions hereof, the labor administrative department and other departments in charge shall order rectification. Where the circumstances are serious, penalty shall be imposed on the basis of more than RMB 1,000 and less than RMB 5,000 per person, and the business license shall be revoked by the industry and commerce administrative department. Where harm is done to the dispatched laborer, the labor dispatch unit and the labor service unit shall assume joint and several liability.

Article 93 In relation to the law breaching and criminal behaviors of an employing unit without the lawful operation qualification, legal liability shall be pursued in accordance with the law. Where labor services have been provided by a laborer, such unit or the investee shall make labor remuneration, economic compensation and liquidated damages to the laborer in accordance with the relevant provisions hereof. Where harm is done to the laborer, it shall assume compensation liability.

Article 94 Where an individual contracting business violates the provisions hereof by recruiting laborers and brings harm to the laborers, the contracting organization and the individual contracting operator shall assume joint and several liability.

Article 95 Where the labor administrative department or other relevant departments in charge and the personnel thereof are derelict of duty and fail to perform statutory duties, or exercise authority in violation of the law, and loss is incurred by the laborer or the employing unit, it shall assume compensation liability. Administrative penalty shall be imposed on the directly responsible person in charge or other directly responsible persons. If a crime is constituted, criminal liability shall be pursued.

## **Chapter VIII Supplementary Provisions**

Article 96 Where an institution concludes, performs, changes, dissolves or terminates the labor contract with working personnel under the recruitment system, and laws, administrative regulations provide or the state provides otherwise, such provisions shall prevail. If no provision has been made, the relevant provisions hereof shall be followed.

Article 97 If a labor contract has been concluded in accordance with the law prior to the implementation of this Law and continues to exist after the implementation hereof, such labor contract shall continue to be performed. The times of the continuous conclusion of a labor contract with fixed terms prescribed in Item 3 of Paragraph Two of Article 14 hereof shall be calculated from the renewal of the labor contract with fixed terms following the implementation hereof.

In relation to the labor relationships that have been established prior to the implementation of this Law but no written labor contract is concluded, such labor contract shall be concluded within one month of the implementation hereof.

Where a labor contract in existence after the implementation hereof is dissolved or terminated, and economic compensation shall be made in accordance with Article 46 hereof, the time limit of economic compensation shall be calculated from the effective date of this Law. Prior to the implementation hereof, an employing unit shall make economic compensation to the laborer in accordance with the prevailing provisions.

Article 98 The Law shall be effective as of January 1, 2008.