

Law of the P. R. of China on Mediation and Arbitration of Labor Disputes

发文日期 12-29-2007

内容分类 Employment & Labor Law

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

时 效 性 Effective

生效日期 2008-05-01

有效范围 National

Law of the P. R. of China on Mediation and Arbitration of Labor Disputes

(Adopted at the 31st Session of the Standing Committee of the 10th National People's Congress on December 29, 2007)

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Chapter I General Provisions

Article 1 The Law is formulated in order to fairly and timely resolve labor disputes, protect the lawful rights and interests of the parties and promote harmonious and stable labor relations.

Article 2 The Law shall apply to the following labor disputes between employing units and laborers within the territory of the People's Republic of China:

1. disputes arising from the confirmation of labor relations;
2. disputes arising from the conclusion, performance, alteration and termination of labor contracts;
3. disputes arising from name removal, dismissal, resignation or vacation of office;
4. disputes arising from working hours, rest days and leave days, social insurance, fringe benefits, training and labor protection;
5. disputes arising from labor remunerations, work injury medical expenses, economic compensation or damages; or
6. other labor disputes prescribed by laws and regulations.

Article 3 The resolution of labor disputes shall be based on facts and follow the principles of

lawfulness, fairness, timeliness and mediation-oriented to protect the lawful rights and interests of the parties.

Article 4 Where a labor dispute arises, a laborer may have a consultation with the employing unit or request the labor union or a third party to have a consultation with the employing unit in order to reach a settlement agreement.

Article 5 Where a labor dispute arises, the parties are not willing to have a consultation, the consultation fails or the settlement agreement is reached but not performed, an application for mediation may be made to an mediation institute. Where the parties are not willing to mediate, the mediation fails or the mediation agreement is reached but not performed, an application for arbitration may be made to the labor dispute arbitration commission. Where there is objection to the arbitral award, litigation may be initiated to a people's court unless otherwise specified herein.

Article 6 Where a labor dispute arises, the parties have the responsibility to give evidence for their own claim. Where the evidence relevant to the dispute matter is handled and managed by the employing unit, the employing unit shall give such evidence. Where the employing unit does not give evidence, it shall assume any unfavorable consequences.

Article 7 Where the party in a labor dispute consists of more than 10 laborers, and they have a joint request, they may recommend a representative to participate in mediation, arbitration or litigation activities.

Article 8 The labor administrative department of people's governments at the county level or above together with labor unions and enterprise representatives shall establish a labor relation tripartite mechanism to jointly study and resolve major issues of labor disputes.

Article 9 Where an employing unit violates state provisions and labor remunerations are in arrears or not paid in full, or work injury medical expenses, economic compensation or damages are in arrears, the laborer may make a complaint to the labor administrative department which shall handle the matter in accordance with the law.

Chapter II Mediation

Article 10 Where a labor dispute arises, the parties may apply for mediation to the following mediation institutes:

1. Enterprise labor dispute mediation commission;
2. Basic-level people's mediation institutes established in accordance with the law;
3. Institutes with labor dispute mediation function established in towns and villages and districts.

The enterprise labor dispute mediation commission shall comprise employee representatives and enterprise representatives. Employee representatives shall be labor union members or recommended by all employees, and enterprise representatives are designated by the responsible

person of enterprise. The officer of the enterprise labor dispute mediation commission shall be a labor union member or a person recommended by both parties.

Article 11 The mediators of labor dispute mediation institutes shall be citizens that are impartial, connected with the mass and passionate about mediation work, and have certain legal knowledge, policy level and cultural level.

Article 12 The parties that apply for labor dispute mediation may submit an application in writing or orally. Where it is an oral application, the mediation institute shall record the basic particulars of the applicant, the matter in dispute that requires mediation, the reason and time on the spot.

Article 13 To mediate labor disputes, the facts and reasons of both parties shall be listened and mediation is conducted with patience to assist in reaching an agreement.

Article 14 Where an agreement is reached after mediation, a mediation agreement shall be prepared.

The mediation agreement shall be signed or sealed by both parties, and signed by the mediator as well as sealed by the mediation institute to take effect. It shall be binding on both parties and both parties shall perform the agreement.

The parties may apply for arbitration in accordance with the law if no mediation agreement is reached within 15 days of the receipt of the mediation application by the labor dispute mediation institute.

Article 15 Where the mediation agreement is reached and either party that fails to perform the mediation agreement within the time limit prescribed in the agreement, the other party may apply for arbitration in accordance with the law.

Article 16 Where the mediation agreement is reached in respect of the payment of labor remunerations, work injury medical expenses, economic compensation or damages in arrears and the employing unit fails to perform the agreement within the time limit prescribed in the agreement, the laborer may apply to the people's court for a payment order in accordance with the law on the strength of the mediation agreement. The people's court shall issue the payment order in accordance with the law.

Chapter III Arbitration

Section 1 General Provisions

Article 17 Labor dispute arbitration commissions shall be set up pursuant to the principles of coordinated planning, rational layout and meeting actual needs. People's governments of provinces and autonomous regions may decide to set up a labor dispute arbitration commission at the municipal and county levels; people's governments of municipalities directly under the central

government may decide to set up a labor dispute arbitration commission at district and county levels; and people's governments of cities specifically designated in the state plan and cities with districts may also establish one or several labor dispute arbitration commissions. Labor dispute arbitration commissions are not set up according to administrative areas level by level.

Article 18 The labor administrative department under the State Council shall formulate arbitration rules in accordance with the provisions hereof. The labor administrative department of people's governments of provinces, autonomous regions and municipalities directly under the central government shall provide guidance to labor dispute arbitration work within the administrative area.

Article 19 Labor dispute arbitration commissions shall comprise the representative of the labor administrative department, labor union representative and enterprise representative. The composition of the labor dispute arbitration commissions shall be an odd number.

Labor dispute arbitration commissions shall perform the following functions and duties in accordance with the law:

1. appointment and dismissal of full-time or part-time arbitrators;
2. acceptance of labor dispute cases;
3. discussion of major or complicated labor dispute cases; and
4. supervision of arbitration activities.

Labor dispute arbitration commissions shall set up offices to handle the day-to-day work of the labor dispute arbitration commissions.

Article 20 Labor dispute arbitration commissions shall have an arbitrator register.

Arbitrators shall be impartial and fulfill any of the following requirements:

1. having served as an adjudicator;
2. engaging in legal research or teaching with a designation of middle level or above;
3. having legal knowledge and engaging in human resources management, labor union work or other professional work for five full years; or
4. having legal practice for three full years.

Article 21 Labor dispute arbitration commissions shall be responsible for the labor disputes occurred in the district under their jurisdiction.

Labor disputes shall be handled by the labor dispute arbitration commission at the place where the labor contract is performed or at the place where the employing unit locates. Where both parties apply for arbitration to the labor dispute arbitration commission at the place where the labor contract is performed or the place where the employing unit locates, the labor dispute shall fall within the jurisdiction of the labor dispute arbitration commission at the place where the labor

contract is performed.

Article 22 The laborer in a labor dispute and the employing unit are the parties to labor dispute cases.

Where there is a labor dispute between a labor deployment unit and a laborer, the labor deployment unit and the employing unit are the joint parties.

Article 23 The third party that has an interest in the result of the handling of a labor dispute case may apply for participating in arbitration activities or be notified to participate in arbitration activities by the labor dispute arbitration commission.

Article 24 The parties may appoint an agent to participate in arbitration activities. To appoint an agent to participate in arbitration activities, a power of attorney signed or sealed by the appointer shall be submitted to the labor dispute arbitration commission. The power of attorney shall set out the appointment matter and the authority.

Article 25 A laborer that has lost full or partial civil capability shall participate in arbitration activities by his legal representative. Where there is no legal representative, an agent shall be designated by the labor dispute arbitration commission. Where the laborer has died, his close relative or agent shall participate in arbitration activities.

Article 26 The arbitration of labor disputes shall be conducted openly, unless the parties agree not to conduct openly or state secrets, trade secrets or personal privacy is involved.

Section 2 Application and Acceptance

Article 27 The time limit for application for arbitration in labor disputes is one year. The validity of arbitration shall be calculated from the date the parties know or shall have known the infringement of their rights.

The validity of arbitration as prescribed in the previous paragraph shall be interrupted where either party claims its rights against the other party; or the relevant department requests for the right of relief, or the other party agrees to perform its obligations. The validity of arbitration shall be calculated again from the time of interruption.

Where the parties cannot apply for arbitration within the validity of arbitration as prescribed in Paragraph One of this article due to force majeure or other proper reasons, the validity of arbitration is suspended. The validity of arbitration shall resume following the non-existence of the reason for suspension.

Where a dispute arises within the subsistence of labor relations due to labor remunerations in arrears, the laborer that applies for arbitration shall not be restricted by the validity of arbitration prescribed in Paragraph One of this article. However, where the labor relations are terminated, the

application for arbitration shall be submitted within one year of the termination of the labor relations.

Article 28 The applicant that applies for arbitration shall submit a written arbitration application and submit duplicates in accordance with the number of the respondents.

The arbitration application shall set out the following matters:

1. Name, gender, age, occupation, working unit and domicile of the laborer; name and domicile of the employing unit and name and duties of the legal representative or person-in-charge;
2. the request for arbitration and the facts and reasons on which such request is based; and
3. evidence and the source thereof, the name and domicile of the witness.

Where the applicant has difficulty in submitting a written arbitration application, an oral application may be made and recorded by the labor dispute arbitration commission which informs the other party.

Article 29 The labor dispute arbitration commission shall, within five days of receipt of the arbitration application, accept the application and inform the applicant if it considers that the acceptance conditions are fulfilled; if the acceptance conditions are not fulfilled, it shall notify the applicant in writing and state the reason. Where the labor dispute arbitration commission does not accept or fails to make a decision within the time limit, the applicant may initiate litigation to the people's court in respect of such labor dispute.

Article 30 The labor dispute arbitration commission shall, after acceptance of the arbitration application, serve a duplicate of the arbitration application on the respondent within five days.

The respondent shall, upon receipt of the duplicate of arbitration application, submit a statement of defense to the labor dispute arbitration commission within 10 days. The labor dispute arbitration commission shall, within five days of receipt of the statement of defense, serve a copy of the defense on the applicant. Where the respondent does not submit a statement of defense, the arbitration proceedings shall not be affected.

Section 3 Hearing and Award

Article 31 The award of labor disputes cases by labor dispute arbitration commissions adopts the arbitral tribunal system. The arbitral tribunal shall comprise three arbitrators and has a chief arbitrator. Simple labor dispute cases may be arbitrated solely by an arbitrator.

Article 32 The labor dispute arbitration commission shall, within five days of acceptance of arbitration application, inform the applicant of the composition of the arbitral tribunal in writing.

Article 33 Where an arbitrator is under any of the following circumstances, he shall withdraw, and the parties also have the right to submit written or oral withdrawal application:

1. he is a party to the case or a close relative of the parties or agents;
2. he has an interest in the case;
3. he has other relations with the parties to the case and their agents which may affect fair award;
4. he has meetings with the parties or agents without authorization or send gifts to the parties or agents.

The labor dispute arbitration commission shall timely make a decision on withdrawal application and inform the parties orally or in writing.

Article 34 Where an arbitrator is under the circumstances prescribed in Item 4 of Article 33 hereof or accepts bribe, practices graft or perverts the law, he shall assume legal liability in accordance with the law and the labor dispute arbitration commission shall dismiss him.

Article 35 The arbitral tribunal shall inform both parties of the date and place of hearing in writing five days before the hearing. Where either party has a proper reason, an extension of hearing may be requested three days before the hearing. The labor dispute arbitration commission shall make a decision on extension or not.

Article 36 Where the applicant has received a written notification but fails to be present without proper reason or withdraws from the hearing without the approval of the arbitral tribunal, it may be deemed revocation of arbitration application.

Where the respondent has received a written notification but fails to be present without proper reason or withdraws from the hearing without the approval of the arbitral tribunal, he may be absent from the award.

Article 37 Where the arbitral tribunal considers that verification is required for specialized issues, the parties may agree on the verification organization, where there is no agreement or no agreement can be reached between the parties, verification shall be done by the verification organization designated by the arbitral tribunal.

The verification organization may, at the request of the parties or the arbitral tribunal, dispatch verification personnel to participate in the hearing. The parties may raise questions to the verification personnel with the permission of the arbitral tribunal.

Article 38 The parties shall have the right to cross-examine evidence and debate in arbitral proceedings. Upon the completion of cross-examination of evidence and debate, the chief arbitrator or the sole arbitrator shall solicit the final opinion of the parties.

Article 39 The arbitral tribunal shall, upon verification that the evidence provided by the parties are substantiated, confirm that it is the basis of the acknowledged facts.

Where the laborer fails to give evidence in relation to the arbitration request handled and managed

by the employing unit, the arbitral tribunal may request the employing unit to provide such evidence within the prescribed time limit. Where the employing unit fails to provide such evidence within the prescribed time limit, it shall assume the unfavorable consequences.

Article 40 The arbitral tribunal shall make a written record of the hearing. The parties and other participants of arbitration shall have the right to make correction if they consider that the records of their statements are omitted or in error. If no supplementation is made, such application shall be recorded.

The written record shall be signed or sealed by the arbitrators, recording personnel, the parties and other participants of arbitration.

Article 41 The parties may settle on their own after application for labor dispute arbitration. Where the settlement agreement is reached, the arbitration application may be withdrawn.

Article 42 The arbitral tribunal shall mediate before making an award.

Where an agreement is reached after mediation, a statement of mediation shall be prepared by the arbitral tribunal.

The statement of mediation shall state the request for arbitration and the result agreed by the parties. The statement of mediation shall be signed by arbitrators and sealed by the labor dispute arbitration commission and serve on the parties. The statement of mediation shall carry legal effect after acknowledgement.

If mediation fails or either party gives back before the service of the statement of mediation, the arbitral tribunal shall make an award timely.

Article 43 Where the arbitral tribunal makes an award to labor dispute cases, it shall do so within 45 days of the acceptance of the arbitration application by the labor dispute arbitration commission. If an extension is required due to complexity of the case, an extension may be allowed with the approval of the officer of labor dispute arbitration commission and the parties shall be informed in writing, but the extension may not exceed 15 days. If no arbitral award is made after the time limit, the parties may initiate litigation in relation to the labor dispute to the people's court.

Where the arbitral tribunal makes an award to a labor dispute case and partial facts are clear, an award may be made on such parts.

Article 44 In respect of cases for the claim of labor remunerations, work injury medical expenses, economic compensation or damages, the arbitral tribunal may, pursuant to the application of the parties, make an award on advance execution and transfer to the people's court for execution.

Where the arbitral tribunal makes an award on advance execution, the following conditions shall

be fulfilled:

1. there is a clear relation of rights and obligations between the parties; and
2. if there is no advance execution, the living of the applicant will be seriously affected.

Where a laborer applies for advance execution, no security may be provided.

Article 45 Awards shall be made in accordance with the opinions of arbitrators in majority, and other opinions of the arbitrators in minority shall be recorded. Where the arbitral tribunal cannot form a majority opinion, the award shall be made in accordance with the opinion of the chief arbitrator.

Article 46 The statement of award shall set out the arbitration request, the fact in dispute, the reason for award, the result of award and the date of award. The award shall be signed by arbitrators and sealed by the labor dispute arbitration commission. Arbitrators with different opinions towards the award may sign or not sign.

Article 47 In respect of the following labor disputes, the arbitral award shall be the final award and the statement of award shall have legal effect from the date of making unless otherwise stated hereof:

1. disputes in relation to the claim of labor remunerations, work-related injury medical expenses, economic compensation or damages which do not exceed the local monthly wage standard for an amount of 12 months;
2. disputes arising from working hours, rest days and leave days and social insurance in the implementation of state labor standards.

Article 48 Where a laborer has objection to the arbitral award prescribed in Article 47 hereof, he may initiate litigation to the people's court within 15 days of the receipt of the statement of award.

Article 49 Where an employing unit has evidence to prove that the arbitral award prescribed in Article 47 hereof is under any of the following circumstances, it may apply for revocation of award to the intermediate people's court at the place where the labor dispute arbitration commission locates within 30 days of the receipt of the statement of award.

1. the applicable laws and regulations are in error;
2. the labor dispute arbitration commission has no jurisdiction;
3. the statutory proceedings are violated;
4. the evidence on which the award is based is forged;
5. the other party has concealed evidence that is sufficient to affect a fair award;
6. the arbitrator accepts bribe, practices graft, and perverts the law.

If the people's court composed as collegiate bench has verified that any of the circumstances prescribed in the previous paragraph exists, it shall revoke the award.

Where the arbitral award is revoked by the people's court, the parties may initiate litigation to the people's court in relation to such labor dispute within 15 days of the receipt of the statement of award.

Article 50 Where the parties have objection to the arbitral award of other labor dispute cases other than those prescribed in Article 47 hereof, they may initiate litigation to the people's court within 15 days of the receipt of the statement of award. If no litigation is initiated, the statement of award shall have legal effect.

Article 51 The parties shall perform the statement of mediation and statement of award that carry legal effect within the time limit in accordance with provisions. If either party fails to perform within the time limit, the other party may apply for execution to the people's court in accordance with the relevant provisions of the Civil Procedure Law. The people's court that accepts the application shall execute in accordance with the law.

Chapter IV Supplementary Provisions

Article 52 Where the working personnel on the appointment system of institutions have a labor dispute with the unit, this Law shall be followed; if laws, administrative regulations or the provisions of the State Council provide otherwise, such provisions shall be followed.

Article 53 The arbitration of labor disputes are free of charge. The funding of labor dispute arbitration commissions are protected by the treasury.

Article 54 The Law shall come into effect from May 1, 2008.