

Order of the Ministry of Human Resources and Social Security

(No. 1)

The Implementation Measures for the Paid Annual Leave for Employees of Enterprises, which were adopted at the sixth executive meeting of the Ministry of Human Resources and Social Security on July 17, 2008, are hereby promulgated, and shall come into force as of the date of promulgation.

Minister Yin Weimin

September 18, 2008

Implementation Measures for Paid Annual Leave for Employees of Enterprises

Article 1 These Measures are formulated for the purpose of implementing the Regulation on Paid Annual Leave for Employees (hereinafter referred to as Regulation).

Article 2 These Measures apply to the enterprises, private non-enterprise entities and individual industrial and commercial households hiring labor (hereinafter referred to as “employer”) in the People’s Republic of China and the employees having an employment relationship therewith.

Article 3 Employees who have worked continuously for one year or more are entitled to paid annual leave.

Article 4 The days of annual leave which may be taken by an employee shall be determined according to the employee’s accumulative working time which shall cover the employee’s working time in the same or different employers and the hours deemed as working time by any law, administrative regulation or State Council provisions.

Article 5 The days of annual leave which may be taken by a new employee who satisfies the requirement of Article 3 in the current year shall be calculated according to the number of days from the time when he is employed by this employer to the end of the calendar year, and if the result is less than one day, he shall not enjoy annual leave this year.

The calculation formula is: the number of days from the time when he is employed by this employer to the end of the calendar year/365 × the days of annual leave he is entitled to if he works for this employer for 12 months in the current year.

Article 6 Home leave, marriage or funeral leave and maternity leave as given by the state as well as the period of suspension of work with reservation of salary due to work injury shall be additional to paid annual leave.

Article 7 An employee who has taken winter and summer vacations more than the due annual leave in a year is not entitled to the annual leave of the year. If the days of winter and summer vacations taken by the employee are less than the days of paid annual leave, for work reasons, the employer he works for shall grant to him the untaken annual leave days.

Article 8 If an employee falls under any of the circumstances prescribed in Article 4 (2), (3), (4) and (5) of the Regulation in the year after taking the annual paid leave of that year, he shall not be entitled to the paid annual leave of the next year.

Article 9 An employer may, in light of the actual production and work situation, plan the annual leave of its employees as a whole on the basis of employees' own wills. Where an employer cannot give annual leave to an employee or decides to postpone the annual leave to the next year due to work needs, it shall get the consent of the employee.

Article 10 Where an employer does not give annual leave to an employee or gives him days of annual leave less than the days of annual leave due upon the consent of the employee, it shall pay the employee 300% of his daily wage income for each day of the annual leave due and not taken in the year, which includes the wage income to be paid by the employer to the employee per day in normal working days.

An employer shall give annual leave to its employees, but if any employee gives a writing notice of not taking annual leave on his own will, the employer is allowed to pay for the employee's

normal working days.

Article 11 The formula for calculating the daily wage income of an employee which is used for calculating the payment for his annual leave time due but not taken shall be dividing the monthly wage income of the employee by the paid days of each month (21.75 days).

The term “monthly wage” as mentioned above refers to the average monthly wage of the employee in the 12 months before the employer pays for his annual leave time due but not taken excluding the pay for overtime hours. If the employee works for less than 12 months in the employer, the average monthly wage shall be calculated according to the actual months he works.

Employees shall be paid for annual leave equally as for normal working days. For an employee paid by piece rate, drawing a percentage or according to performance, his daily wage income shall be calculated according to the first two paragraphs of this Article.

Article 12 When an employer dissolves or terminates the employment contract with an employee, if the employee has annual leave time due but not taken in the year, the employer shall calculate the days of the annual leave due but not taken according to the employee’s working time in the year and pay him for those days if the result is not less than one day.

The calculation formula shall be: the calendar days that the employee has spent in the employer/365 × the days of annual leave due in the year - the days of annual leave that have been taken in the year.

If the employee has taken the annual leave of the year and the days of the annual leave taken by the employee are more than the days calculated according to his working time in the year, the employer shall not ask the employee to reimburse for the extra days taken off by the employee.

Article 13 If the annual leave days and the payment for untaken annual leave days as stipulated in the employment contract, collective contract or the management rules of the employer are more than the statutory standards, such stipulations shall apply.

Article 14 Employees of labor dispatch entities are entitled to annual leave as long as they satisfy the requirement provided in Article 3 of these Measures.

Where an employee under dispatch is paid by the labor dispatch entity for the non-working time during the employment contract for days more than the annual leave he is entitled to in that year, he shall not take the annual leave of the year; if the days are less than the annual leave days he is entitled to, the labor dispatch entity or the employer shall give him the rest annual leave time.

Article 15 The labor security department of each local people's government at or above the county level shall supervise and inspect employers' implementation of the Regulation and these Measures.

Where an employer fails to give annual leave to its employees and does not pay for their annual leave entitlement in accordance with the Regulation and these Measures, the labor security department under the people's government at or above the county level shall, at its capacity, order the employer to correct within a prescribed time limit. If the employer fails to do so within the said time limit, the labor security department shall order it to pay wage income for the untaken annual leave days and to make compensations to employees according to the amount of such wage income. If the employer still refuses to make the payments ordered by the labor security department, the labor security department shall apply to the people's court for enforcement.

Article 16 Any dispute over annual leave between an employee and his employer shall be settled in accordance with the provisions on the settlement of labor disputes.

Article 17 State organs, public institutions, social organizations and the employees thereof shall be governed by these Measures unless it is otherwise provided by any law, administrative regulation or State Council provisions.

The annual leave for seamen shall be governed by the Regulation of the People's Republic of China on Seamen.

Article 18 For the purpose of these Measures, the term "year" refers to a calendar year.

Article 19 These Measures shall come into force as of the date of promulgation.