

Order of the State Council of the People' s Republic of China

(No. 535)

The Regulation on the Implementation of the Employment Contract Law of the People' s Republic of China, which was adopted at the 25th executive meeting of the State Council on September 3, 2008, is hereby promulgated, and shall come into force on the date of promulgation.

Premier Wen Jiabao

September 18, 2008

Regulation on the Implementation of the Employment Contract Law of the People' s Republic of China

Chapter I General Provisions

Article 1 This Regulation is formulated to implement the Employment Contract Law of the People' s Republic of China (hereinafter referred to as Employment Contract Law).

Article 2 The people' s governments at all levels, the labor administrative departments of the people' s governments at or above the county level, and the labor unions, etc. shall take steps to promote the implementation of the Employment Contract Law and develop a harmonious employment relationship.

Article 3 Legally established accounting firms, law firms and other partnerships and foundations are employers defined in the Employment Contract Law.

Chapter II Conclusion of Employment Contracts

Article 4 A branch office established by an employer as defined in the Employment Contract Law which has obtained its business license or registration certificate according to law may conclude employment contracts with employees in the name of an employer; if it has failed to obtain a business license or registration certificate, it may conclude employment contracts with employees only upon the authorization of the employer.

Article 5 Where any employee, after being notified by the employer in writing, fails to conclude a written employment contract with the employer within one month from the day when he is employed, the employer shall terminate the employment relationship with the employee and notify the employee in writing, in which case, the employer is not required to make any economic compensation to the employee, but shall pay the employee for his actual working time.

Article 6 Where an employer fails to conclude a written employment contract with an employee after the lapse of more than one month but less than one year from the date when the employee is employed, it shall pay to the worker his monthly wages in double amount according to Article 82 of the Employment Contract Law, and shall conclude a written employment contract with the employee. Where an employee refuses to conclude a written employment contract with his employer, the employer shall terminate the employment relationship, notify the employee in writing, and make economic compensations to the employee according to Article 47 of the Employment Contract Law.

The start time of the period when an employer is required to pay an employee his monthly wages in double amount shall be the day following the full month from the day when the employee is employed, and the end time shall be the day before the day when the written employment contract is concluded.

Article 7 Where an employer fails to conclude a written employment contract with an employee after the lapse of one full year from the day when the employee is employed, under Article 82 of the Employment Contract Law, the employer shall pay his monthly wages in double amount from the day next to the lapse of a full month to the day before it is a full year since the employee's employment, and it shall be deemed that the employer has concluded an employment contract without a fixed term with the employee on the day when it is a full year since the employee's employment, and a written employment contract without a fixed term shall be concluded with the employee immediately.

Article 8 The roster of employees as mentioned in Article 7 of the Employment Contract Law shall contain the employees' name, gender, citizen's identity number, registered permanent

residence address and current address, contact information, form of employment, start time of employment, and term of the employment contract, etc.

Article 9 The start time of the term “10 consecutive years” as mentioned in Paragraph 2 of Article 14 of the Employment Contract Law shall be the day when the employer hired the employee, including the time of employment before the Employment Contract Law came into force.

Article 10 Where an employee is transferred to a new employer for reasons not attributable to himself, his working time with the original employer shall be consolidated into his working time with the new employer. If the original employer has made economic compensations for his working time with the original employer, the new employer shall not consider the employee’s working time with the original employer when calculating economic compensations made to such employee for dissolving or terminating the employment contract with him.

Article 11 Where an employee proposes the conclusion of an employment contract without a fixed term with the employer under Paragraph 2, Article 14 of the Employment Contract Law, the employer shall conclude an employment contract without a fixed term with him, unless it is otherwise agreed to by both parties. The contents of an employment contract shall be determined by both parties under the principles of legality, equity, free will, consensus and good faith. Any dispute over the contents shall be settled according to Article 18 of the Employment Contract Law.

Article 12 For the public welfare posts arranged by the local people’s governments at various levels and the relevant departments of the local people’s government at or above the county level for people with employment difficulties which enjoy post-based subsidies and social insurance subsidies, the provisions of the Employment Contract Law with respect to employment contracts without a fixed term and economic compensations are not applicable to the employment contracts for those posts.

Article 13 An employer and an employee may not agree on any other term for the termination of the employment contract beyond the circumstances for the termination of employment contracts as prescribed in Article 44 of the Employment Contract Law.

Article 14 Where the place of performance of an employment contract is not the place of registration of the employer, such matters about the employee as the maximum wage level, labor protection, work conditions, prevention against occupational harm and the local average monthly wages in the last year shall be governed by the relevant provisions of the place of performance

of the employment contract. If the relevant standards at the place of registration of the employer are higher than those at the place of performance of the employment contract and both the employer and the employee have agreed on following the relevant provisions of the place of registration of the employer, the relevant provisions of the place of registration of the employer shall apply.

Article 15 A employee' wages during probation shall not be less than 80% of the minimum wages for the same post of the employer or 80% of the wages stipulated in the employment contract, and shall not be less than the minimum wage level of the place where the employer is located.

Article 16 The training expenses as mentioned in Paragraph 2, Article 22 of the Employment Contract Law include the training expenses spent by the employer on providing professional technical trainings for an employee, the travel expenses during the training, and other direct expenses spent on the employee as a result of the training.

Article 17 Where an employment contract expires when the term of service stipulated by the employer and the employee according to Article 22 of the Employment Contract Law has not expired yet, the employment contract shall performed until at least the expiration of the term of service, unless it is otherwise stipulated by both parties.

Chapter III Dissolution and Termination of Employment Contract

Article 18 Under any of the following circumstances, an employee may, according to the conditions and procedures prescribed in the Employment Contract Law, dissolve an employment contract with a fixed term, an employment contract without a fixed term or an employment contract that sets the completion of a specific task as the term of the contract concluded with the employer:

1. the employee and the employer so agree;
2. the employee has notified the employer of the dissolution in writing at least 30 days in advance;
3. the employee has notified the employer of the dissolution three days in advance during probation;
4. the employer fails to provide labor protection or work conditions as it has promised in the employment contract;

5. the employer fails to pay labor remunerations on schedule or in full amount;
6. the employer fails to pay social insurance premiums for the employee as required by law;
7. some of the employer' s rules or procedures have contravened the law and damaged the rights and interests of the employee;
8. the employer, by means of deception or coercion or by taking advantage of the employee' s difficulties, forces the employee to conclude or change the employment contract against the employee' s true will;
9. the employer disclaims its legal liability or denies the employee' s rights in the employment contract;
10. the employer violates the mandatory provisions of any law or administrative regulation;
11. the employer compels the employee to work by force, threat or illegally restricting the personal freedom of the employee;
12. the employer gives orders in violation of the safety regulations or forces the employee to risk his life; or
13. other circumstances under which the employee can dissolve the employment contract as set forth in laws or administrative regulations.

Article 19 Under any of the following circumstances, an employer may, according to the conditions and procedures prescribed in the Employment Contract Law, dissolve an employment contract with a fixed term, an employment contract without a fixed term or an employment contract that sets the completion of a specific task as the term of the contract concluded with an employee:

1. the employer and the employee so agree;
2. the employee is proved to have failed to meet the employment conditions during the probation;
3. the employee seriously violates the rules and procedures set up by the employer;
4. the employee seriously neglects his duties or engages in malpractice for personal gains and has caused severe damages to the employer;
5. the employee simultaneously enters an employment relationship with any other employer and thus seriously affects his completion of the tasks assigned by the employer, or the employee refuses to correct after the employer has pointed out the problem;
6. the employee, by means of deception or coercion or by taking advantage of the employer' s difficulties, forces the employer to conclude or change the employment contract against the

employer' s true will;

7. the employee is under investigation for criminal liabilities;

8. the employee is sick or is injured for a non-work-related reason and cannot resume his original position after the expiration of the prescribed time period for medical treatment, nor can he assume any other position arranged by the employer;

9. the employee is incompetent for his position or is still so after training or being assigned to another position;

10. the objective situation on which the conclusion of the employment contract is based has changed considerably, which makes it impossible to perform the employment contract, and no agreement on changing the contents of the employment contract has been reached after negotiations between the employer and the employee;

11. the employer is being restructured according to the Enterprise Bankruptcy Law;

12. the employer encounters serious difficulties in production and business operations;

13. the employer changes its products, makes important technological renovations, or adjusts the way of business operations, and it is still necessary to lay off some employees after modifying the employment contract; or

14. other objective economic situations in which the employment contract is based change substantially, which makes it impossible to perform the employment contract.

Article 20 Where an employer decides to dissolve the employment contract with an employee by paying the latter an additional month' s wages according to Article 40 of the Employment Contract Law, the amount of the additional month' s wages shall be determined according to the employee' s wages in the last month.

Article 21 An employment contract shall be terminated when an employee reaches the mandatory age for retirement.

Article 22 Where an employment contract that sets the completion of a specific task as the term of the contract is terminated upon the completion of the specific task, the employer shall make economic compensations to the employee according to Article 47 of the Employment Contract Law.

Article 23 Where an employer terminates the employment contract with an employee injured at work, it shall, apart from making economic compensations according to Article 47 of the

Employment Contract Law, pay medical subsidies for the work-related injury and employment subsidies to the disabled once and for all according to the state provisions on work-related injury insurance.

Article 24 A employment contract dissolution or termination certificate issued by an employer shall bear the term of the employment contract, the date when it is dissolved or terminated, the position of the employee and the working time of the employee with this employer.

Article 25 Where any employer dissolves or terminates the employment contract with an employee against the Employment Contract Law, if it has paid a compensation according to Article 87 of the Employment Contract Law, it is not required to make economic compensations. The working time based on which the said compensation is calculated shall be calculated from the day when the employee was hired.

Article 26 If an employer and an employee have stipulated the period of service in the employment contract, when the employee dissolves the employment contract according to Article 38 of the Employment Contract Law, it is not against the stipulation of the period of service, and the employer is not entitled to ask the employee to pay a penalty for breach of contract.

If the employer dissolves the employment contract which has stipulated the period of service under any of the following circumstances, the employee shall pay a penalty for breach of contract to the employer:

1. the employee seriously violates the rules and procedures set up by the employer;
2. the employee seriously neglects his duties or engages in malpractice for personal gains and has caused severe damages to the employer;
3. the employee simultaneously enters an employment relationship with any other employer and thus seriously affects his completion of the tasks assigned by the employer, or the employee refuses to correct after the employer has pointed out the problem;
4. the employee, by means of deception or coercion or by taking advantage of the employer's difficulties, forces the employer to conclude or change the employment contract against the employer's true will; or
5. the employee is under investigation for criminal liabilities.

Article 27 According to Article 47 of the Employment Contract Law, the monthly wages for calculating the economic compensation to be paid to an employee shall be the monthly wages that the employee deserves, including the hourly wages or piecework wages and other monetary incomes such as bonuses, allowances and subsidies. If the average wages of the employee in the 12 months before the employment contract is dissolved or terminated are below the local minimum wages level, the economic compensation shall be calculated based on the local minimum wages. If the working time of the employee is less than 12 months, the average wages shall be calculated based on the actual work time.

Chapter IV Special Provisions on Labor Dispatch

Article 28 According to Article 67 of the Employment Contract Law, a labor dispatch entity funded by an employer or a subsidiary entity thereof or established in the form of partnership may not dispatch any employee to the employer or the subsidiary entity.

Article 29 An employer shall fulfill its obligations set forth in Article 62 of the Employment Contract Law and safeguard the legitimate rights and interests of the dispatched employees.

Article 30 No labor dispatch entity may employ part-time to-be-dispatched employees.

Article 31 Economic compensations to be made after a labor dispatch entity or a dispatched employee has lawfully dissolved or terminated the employment contract shall be made according to Article 46 or 47 of the Employment Contract Law.

Article 32 Where any labor dispatch entity illegally dissolves or terminates the employment contract with a dispatched employee, Article 48 of the Employment Contract Law shall apply.

Chapter V Legal Liability

Article 33 Where any employer violates the provisions of the Employment Contract Law on setting up a roster of employees, the competent labor administrative department shall order it to correct within a certain time limit, and, if it fails to do so, impose a fine of not more than

20,000 yuan but not less than 2000 yuan upon it.

Article 34 Where any employer fails to pay employee his monthly wages in double amount or compensations when it is so required by the Employment Contract Law, the competent labor administrative department shall order it to make the payment.

Article 35 Where any employer violates the provisions of the Employment Contract Law or this Regulation on dispatching employees, the competent labor administrative department or other competent department shall order it to correct and, if the circumstances are serious, impose a fine of 1000 yuan to 5000 yuan per dispatched employee. If any damages have been caused to the dispatched employee, the dispatch entity and the employer shall assume joint and several liabilities.

Chapter VI Supplementary Provisions

Article 36 For the reported or complained acts in violation of the Employment Contract Law or this Regulation, the labor administrative departments of the local people's governments at or above the county level shall handle them according to the Regulation on Labor Security Supervision.

Article 37 For any dispute occurred in the conclusion, performance, modification, dissolution or termination of an employment contract between an employee and his employer, the Law of the People's Republic of China on the Mediation and Arbitration of Labor Disputes shall apply.

Article 38 This Regulation shall come into force on the date of promulgation.