

LABOUR LAW OF THE PEOPLE'S REPUBLIC OF CHINA

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Article 1 The law has been formulated according to the Constitution with a view to protecting the legitimate rights and interests of workers, regulating labour relations, establishing and safeguarding a labour system that is adaptable to a socialist market economy and promoting economic development and social progress.

Article 2 The law applies to all enterprises, individual economic organizations (hereinafter referred to as "employers") and workers bound up by contractual labour relationship.

The law is also applicable to government organs, institutions, social organizations and workers bound up by labour contracts.

Article 3 Workers enjoy the rights to equal opportunities of employment and choice of jobs, the right to labour remuneration, the right to rest and vacation, the right to labour safety and health protection, the right to vocational training, the right to social insurance protection and welfare, the right to settlement of labour disputes and other rights as provided by law.

Workers should fulfil job assignments, improve their skills, follow labour safety and health regulations, observe labour discipline and professional ethics.

Article 4 Employers shall establish and improve their rules and regulations according to law and ensure that the workers enjoy their rights and perform their obligations.

Article 5 The State shall adopt all possible measures to promote employment, develop vocational education, formulate labour standards, regulate social income, improve social insurance, coordinate labour relations and gradually improve the living standards of the workers.

Article 6 The State encourages the workers to participate in social voluntary labour, engage in labour emulation and put forward rationalization proposals, encourages and protects workers in their scientific research, technical innovation and invention and commands and rewards model workers and advanced workers.

Article 7 Workers have the right to join in and organize trade unions according to law.

The trade unions represent and protect the legitimate rights and interests of the workers and carry out their activities independently according to law.

Article 8 Workers shall, according to legal provisions and through workers' congresses, workers' representatives or other channels, participate in democratic management or carry out consultation on an equal footing with their employers concerning the protection of their own legitimate rights and interests.

Article 9 The labour administrative department of the State Council is responsible for labour work in the whole country.

The labour administrative departments of the local people's governments above the county level are responsible for labour work within their administrative regions.

CHAPTER TWO PROMOTION OF EMPLOYMENT

Article 10 The State shall create employment conditions and expand employment opportunities by way of promoting economic and social development.

The State encourages enterprises, institutional organizations and people's organizations to run industries or open up more avenues for operation to increase employment opportunities within the framework of the laws and administrative decrees.

The State supports the workers to organize themselves, voluntarily for business operations or go in for individual businesses to increase employment.

Article 11 The people's governments at all levels should adopt measures to develop all kinds of labour exchanges to provide employment services.

Article 12 With regard to employment, the workers shall not be discriminated in aspects of

nationality, race, sex and religious beliefs.

Article 13 Women enjoy the equal rights of employment as men. In providing employment, it is not allowed to refuse employment of women on sex grounds or raise the employment standards for women, except when the jobs or work posts are not suitable for women as provided for by the State.

Article 14 If there are special provisions in other laws or regulations concerning the employment of handicapped people, people of minority nationalities and soldiers quitting active service, those provisions shall apply.

Article 15 It is forbidden for employers to employ persons under the age of sixteen.

Whenever an unit in culture and arts, sports and special arts and crafts needs to employ young persons under the age of sixteen, examination and approval procedures shall be undertaken according to relevant regulations of the State and the employees thereof should be ensured the right of receiving compulsory education.

CHAPTER THREE LABOUR CONTRACT AND COLLECTIVE CONTRACT

Article 16 A labour contract is an agreement that defines the labour relations between workers and employers as well as the rights and obligations of the two parties.

In establishing labour relations, labour contracts shall be concluded.

Article 17 The conclusion and revision of labour contracts shall observe the principle of equality, voluntariness and unanimity through consultation. It shall not violate the provisions of the laws or administrative decrees.

A labour contract concluded according to law is legally binding and parties to the contract are obliged to perform their obligations provided for in the labour contract.

Article 18 The following labour contracts are invalid:

1. Contracts that have violated the provisions of the law or administrative decrees;
2. Contracts that have been concluded by deception or coercion.

Invalid labour contracts are not legally binding from the moment they are concluded. Whenever a part of a labour contract has been affirmed invalid, the remaining parts of it shall still be valid if the invalid part does not affect the effect of them.

The invalidity of a labour contract shall be determined by the labour dispute arbitration committee or the people's court.

Article 19 A labour contract shall be concluded in a written form and shall contain the following provisions:

1. Term of the labour contract;
2. Specific job requirements;
3. Labour protection and working conditions;
4. Remuneration;
5. Labour discipline;
6. Conditions for terminating the labour contract;
7. Responsibilities for violating the labour contract.

Apart from these provisions that must be included in a labour contract as provided for in the preceding paragraph, the parties concerned may add other provisions upon agreement through consultation.

Article 20 The term of a contract may be fixed or non-fixed or fixed in terms of a certain amount of work done.

When extension of a labour contract under agreement of both parties after a worker has worked for an uninterrupted term of ten years or over for a same employer, a labour contract without a fixed term may be concluded if the worker so desires.

Article 21 A labour contract may set up a term of trial execution but the maximum length shall not exceed six months.

Article 22 Provisions may be laid down upon agreement of both parties in a labour contract in terms of keeping commercial secrets of the employer.

Article 23 A labour contract shall be terminated whenever the term provided for in the contract expires or conditions for terminating the contract agreed upon have appeared.

Article 24 A labour contract may be dissolved upon agreement of parties concerned through consultation.

Article 25 An employer may dissolve a labour contract if one of the following cases occurs:

1. A worker is proved to be not up to the employment standards within the period of trial use;
2. A worker has seriously violated labour discipline or the rules and regulations having been laid down by the employer.
3. A worker has committed serious dereliction of duty or resorted to deception for personal gains and caused serious losses to the interests of the employer.
4. A worker has been affixed with criminal responsibility.

Article 26 In one of the following cases, an employer may dissolve a labour contract but shall serve a written notice to the worker in person 30 days in advance:

1. A worker, after a treatment of disease or non-job injuries, is unable to do the job arranged by the employer.
2. A worker is not competent for the job assigned to him and still falls short of the standards even after being trained or given other jobs.
3. A labour contract can no longer be executed due to major changes in the objective conditions and a revision cannot be reached through consultation by both parties.

Article 27 When an employer needs to cut employment due to the conditions of near bankruptcy and in a period of legal rectification or due to difficulties in its production or business operation, the trade union or all the workers should be informed of the true situation with their opinions heard and conveyed by the employer to the labour

administration department.

If an employer that has cut the employment according to the provisions of this article recruits workers again within six months, priority shall be given to the employees being formerly cut.

Article 28 Whenever a termination of labour contracts according to the provisions of Article 24, Article 26, and Article 27 of this law, the employer should give a certain economic compensation to the employees being cut according to the relevant provisions of the State.

Article 29 An employer shall not dissolve labour contracts according to Article 26 and Article 27 if one of the following cases occur with the workers concerned:

1. A worker has been confirmed to have lost totally or partially the capabilities of work due to occupational disease or job injuries;
2. A worker is in the period of treatment for diseases or injuries;
3. A woman worker is in the pregnancy, lying-in and breast-feeding period;
4. Other cases as provided for by law or administrative decrees.

Article 30 If a trade union deems it improper for the employer to dissolve a labour contract, it has the right to raise its opinions. If an employer has violated the law, regulations or the labour contract, the trade union has the right to demand for correction. A trade union shall support and assist, according to law, a worker who applies for arbitration or brings the case before the court.

Article 31 If a worker wants to dissolve his labour contract, a notification in written form should be given to the employer concerned 30 days in advance.

Article 32 A worker may notify the employer of his decision to dissolve the labour contract at any time in one of the following cases:

1. During the period of trial use;
2. The employer compels a worker to work by the use of force, threat or by means of illegally restricting personal freedom;

3. The employer fails to pay remuneration or provide the working conditions agreed upon in the labour contract.

Article 33 The workers of an enterprise may sign a collective contract with the management on pay, working hours, rest and vacation, safety and health, insurance and welfare. The draft of the collective contract shall be submitted to the workers' congress or to all the workers for discussion and approval.

A collective contract shall be signed by the trade union on behalf of the workers and the management of the enterprise. In the absence of a trade union, it shall be signed by representatives of the workers and the management.

Article 34 A collective contract, after it is signed, shall be submitted to the labour administrative department. If the labour administrative department does not raise any objection within 15 days after the document of the collective contract is received, the collective contract is deemed to come into effect.

Article 35 The collective contract signed according to law shall be legally binding to both the enterprise management and all the workers. The working conditions and pay standards agreed upon in the labour contracts signed by individual workers and the enterprise management shall not be lower than those provided for in the collective contract.

CHAPTER FOUR WORKING HOURS, REST AND VACATION

Article 36 The State institutes a working hour system by which every worker shall not work more than eight hours a day and the average working hours per week shall not exceed 44 hours.

Article 37 For workers doing piece jobs, the employer should rationally determine the quotas and piece rate in accordance with the work houring system provided for in Article 36 of this law.

Article 38 An employer shall ensure every worker to have at least one days' rest for a week.

Article 39 If an enterprise is unable to implement the provisions of Article 36 and Article 38 due to its particularity of production, it may introduce other systems of work upon approval of the labour administrative department.

Article 40 An employer shall arrange holidays for its workers in the following festivals:

1. New Year's Day;
2. Traditional Spring Festival;
3. International Labour Day;
4. National Day;
5. Other holidays and festivals as provided for by law or administrative decrees.

Article 41 If needs arise in production and operations, an employer may extend the working hours after consulting the trade union and the workers, but the overtime working shall not exceed one hour a day; in special circumstances that requires extension of working hours, the overtime working shall not exceed three hours a day and 36 hours per month under the conditions of ensuring the health of the workers.

Article 42 The extension of working hours shall not be restricted in one of the following cases:

1. In emergencies when the life and health of the workers and property are threatened due to natural disasters, accidents or other causes;
2. Rush repairs are necessary when production equipment, transportation lines or public facilities are in trouble and affecting production and public interests;
3. Other cases as provided for by law or administrative decrees.

Article 43 Employers shall not extend the working hours by violating the provisions of this law.

Article 44 An employer shall pay the workers wages at a rate higher than that for normal working hours according to the following standards in one of the following cases:

1. To pay no less than 150 percent of the usual wage for working overtime;

2. To pay 200 percent of the usual wage for work during rest days if the rest could not be delayed to an other time.

3. To pay 300 percent of the usual wage for working in statutory holidays.

Article 45 The State institutes the system of annual paid vacation.

A worker who has worked for more than one year shall enjoy the annual paid vacation. The specific regulations in this regard shall be worked out by the State Council.

Article 46 Wages shall be paid according to the principle of "to each according to one's work done" and equal pay for equal work.

The wage scale shall be raised gradually on the basis of economic development. The State shall exercise macro control over the overall payroll.

Article 47 An employer shall determine independently its own distribution of wages and wage scale according to the characteristics of production or operation and its economic results.

Article 48 The State institutes the minimum wage protection system. The specific standards of the minimum wage shall be determined by various provinces, autonomous regions and centrally administered municipalities and submitted to the State Council for record.

The wage paid to a worker by an employer shall not be lower than the minimum wage standard of the locality.

Article 49 In determining and adjusting the minimum wage standards, the following factors shall be taken into consideration:

1. The minimum living expenses of the worker himself and the average minimum living expenses of the family members he/she supports;
2. Average wage level in the country;
3. Labour productivity;

4. Employment situation;

5. Differences in the levels of economic development among different regions.

Article 50 Wages shall be paid to the workers themselves in cash and on a monthly basis. In no circumstance is it allowed to deduct or delay the payment.

Article 51 An employer shall pay wages according to law to workers during their statutory holidays and during marriage or funeral leave or during the time of participating in social activities according to law.

CHAPTER SIX SAFETY AND HEALTH CARE

Article 52 An employer shall establish and perfect the labour safety and health care system, strictly implement the labour safety and health care regulations and standards of the State, carry out labour safety and health care education among the workers and prevent accidents during work and reduce occupational hazards.

Article 53 Labour safety and health care facilities shall conform to the standards set by the State.

Labour safety and health care facilities for new, rebuilding or expansion projects shall be designed, constructed and put into use simultaneously with the main projects.

Article 54 An employer shall provide the worker with labour safety and health conditions and necessary labour protection articles conforming to the stipulations by the State and give regular body check-ups to workers engaging in hazardous jobs.

Article 55 Workers engaging in special operations shall receive special training to acquire the required qualifications.

Article 56 A worker shall strictly observe safety operation procedures.

A worker has the right to refuse to engage in dangerous operations forced upon them by the management in violation of the relevant regulations, and has the right to criticize, inform or bring charges against acts that are harmful to the life and safety and personal health.

Article 57 The State institutes the system of statistics, reporting and handling deaths and injuries and occupational diseases. The labour administrative departments of the people's governments above the county level, relevant departments and employers shall collect statistics, report and handle deaths and job injuries and occupational diseases according to law.

CHAPTER SEVEN SPECIAL PROTECTION TO WOMEN WORKERS AND UNDERAGE WORKERS

Article 58 The State shall exercise special labour protection to women workers and underage workers.

Underage workers are referred to workers between the ages of 16 and 18.

Article 59 It is forbidden to assign women with jobs in mines and coal shafts, labour of Class Four intensity and other jobs forbidden by the State.

Article 60 It is not allowed to assign women with jobs in high altitude, low temperature and cold water during the menstrual period or in manual labour of Class Three intensity.

Article 61 It is not allowed to assign women workers with manual labour of Class Three intensity provided for by the State during their pregnancy or other jobs that are forbidden during pregnancy. For women workers pregnant for more than seven months it is not allowed to make them work overtime or in night shifts.

Article 62 Women workers giving birth shall enjoy a maternity leave for no less than 90 days.

Article 63 It is not allowed to make women workers engage in manual labour of Class Three intensity as provided for by the State during the period of their under one year infant breast-feeding or other jobs forbidden during breast-feeding period; in such cases overtime or night shift work are also not allowed for women workers.

Article 64 It is not allowed to assign underage workers to work in mines, coal shafts or in toxic and harmful jobs or manual labour of Class Four intensity as provided for by the State and other jobs forbidden for underage persons.

Article 65 An employer shall give regular health check-ups to underage workers.

Article 66 The State shall develop vocational training through all possible channels and all measures to develop the job skills of the workers, improve their educational quality and enhance their opportunity to be employed and working abilities.

Article 67 The people's governments at all levels should incorporate job training into their social and economic development programs and encourage and support enterprises, institutions and people's organizations where there are the conditions and individuals to carry out job training in all kinds and forms.

Article 68 An employer shall establish a system of job training and draw and use fees for job training according to State regulations and carry out job training of workers in the light of the actual conditions and in a planned way.

For technical workers, training shall be given before they take up their posts.

Article 69 The State shall classify the occupations and formulate the standards for occupational skills for the jobs provided by the State and introduce the vocational certification system. The examination and assessment organizations approved by the State shall be responsible for the examination and assessment of the job skills of workers.

CHAPTER NINE SOCIAL INSURANCE AND WELFARE

Article 70 The State shall develop social insurance undertakings, establish the social insurance system, social insurance fund so that the workers can get assistance and compensation when they reach old age or when falling ill, suffering job injuries, unemployment or giving birth.

Article 71 The level of social insurance shall be compatible with the level of economic and social development and the capacity of the society to afford.

Article 72 The social insurance funds shall determine its sources according to the type of insurance and gradually be put under the unified arrangements by the society. Employers and workers shall participate in social insurance schemes according to law and pay social insurance fees.

Article 73 Workers shall enjoy social insurance treatment according to law in one of the following cases:

1. Retirement;
2. Falling ill or suffering job injuries;
3. Disabled by job injuries or occupational diseases;
4. Unemployment;
5. Giving birth;

After the death of a worker, the dependents shall enjoy dependency allowances.

The conditions and standards of social insurance treatment shall be provided for by law or regulations.

The social insurance allowances for workers shall be paid in time and in full.

Article 74 Social insurance fund organizations shall be responsible for the receipts, expenditure, management and operation of the social insurance fund and undertake to ensure the maintenance and increment of the value of the social insurance fund.

Organizations supervising the social insurance fund shall exercise supervision over the receipts, expenditure, management and operation of the social insurance fund according to the relevant provisions of the law. The establishment and functions of social insurance fund organizations and social insurance fund supervision organizations shall be provided for by law.

No organization or individual is allowed to use social insurance fund for purposes other than provided.

Article 75 The State encourages employers to establish supplementary insurance for their workers in the light of actual conditions.

The State advocates for individual workers to engage in savings insurance.

Article 76 The State develops social welfare undertakings, build public welfare facilities to provide the conditions for the workers to rest, convalesce and recuperate.

Employers shall create the conditions to improve the welfare and raise the welfare benefits of the workers.

Article 77 When labour disputes arise between the employers and workers, the parties concerned may, according to law, apply for mediation or arbitration or bring the case before the people's court or may settle them through consultation.

Article 78 In settling labour disputes, the principle of legitimacy, fairness and timeliness should be followed in order to safeguard the legitimate rights and interests of the parties to the labour disputes.

Article 79 When a labour dispute arises, the parties concerned may apply with the labour dispute mediation committee of their own unit for mediation. Should the mediation fail and one of the parties concerned demands arbitration, it may apply with the labour disputes arbitration committee for arbitration. One of the parties concerned may also file an application directly with the labour disputes arbitration committee for arbitration. If the arbitration ruling is not accepted, the case may be brought before the people's court.

Article 80 A labour disputes mediation committee may be set up in an employer's unit. The labour disputes mediation committee shall be made up of representatives of workers, the employer and the trade union. The chairmanship of the labour disputes mediation committee shall be taken up by the representative of the trade union.

If an agreement has been reached after mediation, the parties to the disputes are obliged to carry out.

Article 81 The labour disputes arbitration committee shall be made up of representatives of labour administrative department, trade union at the same level and the employer. The chairmanship of the labour disputes arbitration committee shall be taken up by the representative of the labour administrative department.

Article 82 One of the parties to a dispute demanding arbitration should file a written application with the labour disputes arbitration committee within 60 days starting from the

date when the dispute arises. The arbitration ruling should usually be awarded within 60 days starting from the date when the application for arbitration is received. If no exception is taken with the arbitration ruling, the parties concerned shall comply.

Article 83 If a party to a labour dispute refuses to accept the ruling, the party may bring the case before the people's court within 15 days starting from the date when the arbitration award is received. If a party refuses to bring the case before the people's court and refuses to implement the arbitration ruling within the time limited prescribed by law, the other party may apply with the people's court for compulsory implementation.

Article 84 If a dispute arises from the conclusion of a collective contract and the parties concerned fail to settle the disputes through consultation, the labour administrative department of the local people's government may organize all quarters for settlement.

If a dispute arising from the performance of a collective contract and yet the parties concerned fail to settle it through consultation, they may apply for arbitration with the labour disputes arbitration committee. If the arbitration ruling is not accepted, the case may be brought before the people's court within 15 days starting from the date when the arbitration award is received.

CHAPTER ELEVEN SUPERVISION AND EXAMINATION

Article 85 The labour administrative departments of the people's governments above the county level shall exercise supervision and examination over the employers with regard to the implementation of labour discipline and the laws and regulations. They have the right to stop acts that violate the labour discipline and the laws and regulations and order the parties concerned to correct.

Article 86 Personnel of labour administrative departments of the people's governments above the county level have the right, while on duty, to enter the employer's units to inquire about the implementation of labour discipline and the laws and regulations and get access to the necessary materials and the working sites for examination.

Personnel of labour administrative departments of the people's governments above the county level shall present their identification cards while performing their duties and handle matters impartially and observe relevant regulations.

Article 87 The relevant departments of the people's governments above the county level

protection articles and facilities, the labour administrative department in charge or relevant departments shall command a correction or a fine. If the case is very serious, it should be submitted to the people's government above the county level for decision to order a stoppage of production for rectification. If an employer fails to adopt measures to prevent hidden accidents, thus causing a major accident that incurs loss of life and property to the workers, criminal responsibility shall be affixed on the people responsible in reference to the provisions of Article 187 of the criminal law.

Article 93 Criminal responsibility shall be affixed on the persons who have forced workers to engage in risky operations and thus causing deaths and injuries and serious consequences in violation of the relevant regulations.

Article 94 If an employer illegally recruits persons under the age of 16, the labour administrative department in charge shall command a correction and a fine. If the case is very serious, the license of the employer shall be revoked.

Article 95 If an employer has violated the provisions of this law on the protection of women workers and underage workers and infringed upon their legitimate rights and interests, the labour administrative department in charge shall command a correction and a fine. The employer concerned shall undertake the responsibility for compensation for the damage done to women workers or underage workers.

Article 96 If an employer has committed one of the following acts, the public security organ shall detain the persons responsible for less than 15 days or levy a fine or give a warning and, if the case is serious enough to constitute a crime, a criminal responsibility is affixed:

1. Compelling workers to work by the use of force, threat or by resorting to the means of restricting personal freedom.
2. Insulting, punishing physically, beating, illegally searching or taking workers into custody.

Article 97 If an invalid contract concluded due to reasons on the part of the employer has caused harm to workers, the employer shall undertake the responsibility for compensation.

Article 98 If an employer has dissolved labour contracts in violation of the conditions prescribed by this law or wilfully put off the conclusion of labour contracts, the labour administrative department in charge shall command a correction and if the case has caused damages to workers, the employer shall undertake to compensate.

Article 99 If an employer recruits workers whose original contract with another employer has not been terminated, thus causing economic losses to the original employer, the employer shall be responsible for the compensation according to law.

Article 100 If an employer refuses without reason to pay social insurance fees, the labour administrative department in charge shall command a payment within a certain limit of time. If the employer fails to pay within the prescribed time limit, a fine for delaying payment shall be affixed.

Article 101 If an employer unjustifiably obstructs labour administrative department in charge, relevant departments and their personnel from exercising their rights of supervision and examination or take revenge against informants, the labour administrative department in charge or relevant departments shall impose a fine. If the case is serious enough to constitute a crime, criminal responsibility shall be affixed on the persons responsible.

Article 102 If a worker dissolves his labour contract in violation of the conditions prescribed by this law or violates the provisions on keeping secrets agreed upon in the labour contract, thus causing economic losses to the employer, the worker shall be responsible for the compensation.

Article 103 If personnel of a labour administrative department or relevant department is found to have abused their power or committed dereliction of duty or resorted to deception for personal gains, criminal responsibility shall be affixed if the case is serious enough to constitute a crime and if not, administrative punishments shall be meted out.

Article 104 If a government functionary or a staff member of the social insurance fund organization is found to have used the social insurance funds for other uses, criminal responsibility shall be affixed if the case is serious enough to constitute a crime.

Article 105 If there are provisions by other laws or administrative decrees on the punishment of infringements upon the legitimate rights and interests as provided in this law, the provisions of the other laws or administrative decrees shall apply.

CHAPTER THIRTEEN SUPPLEMENTARY PROVISIONS

Article 106 The people's government of various provinces, autonomous regions and centrally administered municipalities shall work out the specific steps for implementing the

labour contract system according to the provisions of this law and in the light of the actual circumstances of their respective areas and submit them to the State Council for record.

Article 107 The law shall come into force as of January 1, 1995.