



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

International Publications

Key Workplace Documents

6-29-2007

Labor Contract Law of the People's Republic of China - Unofficial English Translation

National People's Congress Standing Committee

Follow this and additional works at: <http://digitalcommons.ilr.cornell.edu/intl>

 Part of the [Labor and Employment Law Commons](#)

This Article is brought to you for free and open access by the Key Workplace Documents at DigitalCommons@ILR. It has been accepted for inclusion in International Publications by an authorized administrator of DigitalCommons@ILR. For more information, please contact hlmdigital@cornell.edu.

Labor Contract Law of the People's Republic of China - Unofficial English Translation

Abstract

The Dong Bao Hua Legal Center at East China University of Politics and Law and Ashley Russell (M.R.P. Cornell University), with review and advice from Pan Shih-wei of Chinese Culture University in Taiwan, have produced an English translation of China's recently passed Labor Contract Law. Our thanks to Dr. Michael H. Belzer, Wayne State University, for providing us with this copy.

Keywords

china, labor, law, contract

Disciplines

Labor and Employment Law

LABOR CONTRACT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

Approved by the 28th Conference of the 10th Session of the
National People's Congress Standing Committee on June 29th 2007

Table of Contents

Chapter 1. General Provisions	Articles 1-6
Chapter 2. Conclusion of Labor Contracts	Articles 7-28
Chapter 3. Performance and Modification of Labor Contracts	Articles 29-35
Chapter 4. Dissolution and Termination of Labor Contracts	Articles 36-50
Chapter 5. Special Provisions	
Section 1. Collective Contracts	Articles 51-56
Section 2. Labor Dispatching Contracts	Articles 57-67
Section 3. Non-Full Time Labor Use	Articles 68-72
Chapter 6. Supervision and Inspections	Articles 73-79
Chapter 7. Legal Liability	Articles 80-95
Chapter 8. Supplementary Provisions	Articles 96-98

CHAPTER 1. GENERAL PROVISIONS

Article 1. This Law has been formulated to improve and perfect the labor contract system, to make explicit the rights and obligations of both parties of the labor contract, to protect the lawful rights and interests of laborers and to build and develop harmonious and stable labor relationships.

Article 2. This law is applicable to enterprises, individual economic entities and private non-enterprise organizations (“Units”) that establish labor relationships and conclude, perform, modify, dissolve, or terminate labor contracts with laborers in the People's Republic of China.

This law is also applicable to state authorities, public institutions and social organizations that establish labor relationships and conclude, perform, modify, dissolve and terminate labor contracts with laborers.

Article 3. When a Unit and a laborer conclude a labor contract, they shall abide by the principles of legitimacy, fairness, equality, voluntariness, unanimity through consultation and good faith.

A labor contract that is lawfully concluded shall instantly become legally binding, and both the Unit and the laborer shall perform their respective obligations there under.

Article 4. Units shall establish and improve labor rules and regulations, so as to ensure that labor rights of the laborers are safeguarded and laborers perform according to their labor obligations.

When a Unit formulates, revises or decides on rules and regulations or material matters that have a direct bearing on the immediate interests of its laborers concerning labor remuneration, working hours, rest and vacations, occupational safety and health, insurance and welfare, employee training, working discipline or work quota management, etc. the same shall be discussed by the assembly of laborers' representatives or all the laborers. The assembly of laborers' representatives or all the laborers, as the case may be, shall put forward a proposal and comments, whereupon the matter shall be determined through negotiations with the labor union or employee representatives conducted on a basis of equality.

If, during the implementation of a Unit's rule or regulation, the labor union or a laborer is of the opinion that the rule or regulation is inappropriate, it or he is entitled to communicate such opinion to the Unit, and the rule or regulation shall be improved by making modifications after consultations.

A Unit's rules and regulations that have a direct bearing on the immediate interests of the laborers shall be announced within its organization or distributed to the laborers.

Article 5. The Labor Administration Department of people's governments at the county level and higher, together with the labor union at the same level and enterprise representatives, shall establish a comprehensive tri-partite mechanism for the coordination of labor relationships, in order to jointly study and resolve major issues concerning labor relationships.

Article 6. Labor unions shall assist and guide laborers in the conclusion of labor contracts with their Units and the performance thereof in accordance with the law, and shall safeguard the legitimate rights and interests of laborers.

CHAPTER 2. CONCLUSION OF LABOR CONTRACTS

Article 7. The labor relationship between the Unit and the laborer is established on the date when the laborer is recruited and/or works in the Unit. The Unit shall establish a worker recruitment register for future reference and review.

Article 8. When a Unit concludes a labor contract with a laborer, it shall truthfully inform him as to the content of the work, the working conditions, the work site, occupational hazards, production safety conditions, labor remuneration and other matters the laborer wishes to know. The Unit has the right to know basic information about the laborer which directly relates to the labor contract, and the laborer shall truthfully provide the information.

Article 9. When hiring a laborer, a Unit may not require him to provide any guarantee or collect property from the laborer as collateral, nor may it retain the laborer's resident identification card or other papers.

Article 10. To establish a labor relationship, a written labor contract shall be signed.

In the event that a labor relationship has been established but the Unit and the laborer have not concluded a written labor contract, a written labor contract shall be concluded within one month after the date the Unit starts using the laborer.

In the event that a labor contract is reached before the laborer starts working, the labor relationship is established on the date the laborer starts working.

Article 11. In the event that a Unit fails to conclude a written labor contract with a laborer when carrying out the employment formalities, and it is not clear what labor remuneration is or has been agreed upon with the laborer, the labor remuneration of the newly recruited laborer shall be decided pursuant to the standard specified in the collective contract. Where there is no collective contract or the collective contract does not specify, the Unit shall give the laborer equal pay for equal work.

Article 12. Labor contracts are divided into three types: fixed term labor contract, non-fixed term labor contract and project-based labor contract based on the completion of a specific amount of work.

Article 13. A "fixed term labor contract" is a labor contract whose termination date is agreed upon by the Unit and the laborer.

A Unit and a laborer may conclude a fixed term labor contract upon reaching a negotiated consensus.

Article 14. A "non-fixed term labor contract" is a labor contract for which the Unit

and the laborer have agreed not to stipulate a termination date.

A Unit and a laborer may conclude a non-fixed term labor contract upon reaching a negotiated consensus. If a laborer proposes to or agrees to renew his labor contract under any of the following circumstances, except when the laborer proposes to sign a fixed term labor contract, a non-fixed term labor contract shall be concluded:

- (1) the laborer has been working in the Unit for a consecutive period of no less than 10 years;
- (2) when his Unit introduces the labor contract system or the state-owned enterprise that employs him re-concludes its labor contracts as a result of restructuring, the laborer has been working for the Unit for a consecutive period of no less than 10 years or is less than 10 years away from his statutory retirement age; or
- (3) the renewal occurs after the consecutive conclusion of two fixed term labor contracts and the laborer does not fall under any of the circumstances specified in Article 39 or the first and second items of Article 40 of this Law.

If the Unit fails to sign a written labor contract with the laborer within one year of the establishment of the labor relationship, it will be considered that the Unit has already signed a non-fixed term contract with the laborer.

Article 15. A labor contract whose term is based on the completion of a specific amount of work is a labor contract in which the Unit and the laborer have agreed that the completion of a certain job completes the term of the labor contract.

After consultation and agreement, the Unit may reach a contract with a laborer whose term is based on the completion of a specific project or amount of work

Article 16. A labor contract shall become effective when the Unit and the laborer have reached a negotiated consensus thereon and each of them has signed or sealed the text of such contract.

The Unit and the laborer shall each hold one copy of the labor contract.

Article 17. A labor contract shall specify the following clauses:

- (1) the name, residence and legal representative or senior leadership in charge of the Unit;
- (2) the name, residence and resident identification card number or other valid identification documents of the laborer;

- (3) the term of the labor contract;
- (4) the job description and the work site;
- (5) working hours, rest and vacation;
- (6) labor remuneration;
- (7) social insurance;
- (8) labor protection, working conditions and occupational hazard prevention; and
- (9) other matters which laws and regulations require to be included in labor contracts.

In addition to the requisite clauses mentioned above, a Unit and a laborer may agree to stipulate other matters in the labor contract, such as probation period, training, confidentiality of trade secrets, supplementary insurance and benefits, etc.

Article 18. If a dispute arises due to the fact that the rate or standards for labor remuneration or working conditions, etc. are not explicitly specified in the labor contract, the Unit and the laborer may renegotiate. If the negotiations are unsuccessful, the provisions of the collective contract shall be applied. If there is no collective contract or the collective contract is silent on the labor remuneration rate, the Unit should offer the laborer equal pay for equal work; if there is no collective contract or the collective contract is silent on the working condition standards, the relevant regulations of the state shall be applied.

Article 19. If a labor contract has a term of less than one year, the probation period may not exceed one month; if a labor contract has a term of more than one year and less than three years, the probation period may not exceed two months; and if a labor contract has a term of no less than three years or is non-fixed, the probation period may not exceed six months.

A Unit may stipulate only one probation period with any given laborer.

A probation period shall not be stipulated in a contract whose term is based on the completion of a specific amount of work or is less than three months.

If a labor contract provides for a probation period only or if the term of the probation period is the same as that of the labor contract, such probation period shall be invalid and the term concerned shall be the term of the labor contract.

Article 20. During the probation period, the wages of a laborer may not be less than the lowest wage paid for the equivalent job post within the Unit or less than 80

percent of the wage agreed upon in the labor contract, nor may it be lower than the minimum wage standard of the employing Unit site.

Article 21. During the probation period, a Unit may not dissolve a labor contract unless there is evidence proving that the laborer meets any of the conditions specified in Article 39 or the first and second items of Article 40 of this Law. If a Unit dissolves a labor contract during the probation period, it shall explain the reasons to the laborer.

Article 22. If the Unit pays for specific vocational training expenses and provides the laborer with professional vocational training, it may sign an agreement with the laborer agreeing upon a term of service.

If the laborer breaches the agreement on the term of service, he shall pay damages to the Unit as agreed. The amount of the damages stipulated for breach of the agreement on the term of service may not exceed the training expenses paid by the Unit. In the event of a breach, the damages paid by the laborer may not exceed the portion of the training expenses allocable to the unperformed portion of the term of service.

The Unit's gradual increase of the remuneration rate of the laborer during the term of service according to a normal wage adjustment mechanism shall not be influenced by an agreement on the term of service.

Article 23. A Unit and a laborer may include provisions concerning the safeguarding of trade secrets and intellectual property of the Unit in the labor contract.

If a laborer has an obligation to maintain the confidentiality of his Unit's trade secrets, the Unit may agree with the laborer on the inclusion of non-competition provisions in the labor contract or a separate confidentiality agreement, and stipulate that the Unit shall pay economic compensation to the laborer on a monthly basis during the term of non-competition after the termination of the labor contract. If the laborer breaches the non-competition provisions, he shall pay damages to the Unit as stipulated.

Article 24. The personnel subject to non-competition provisions shall be limited to the Unit's senior management, senior technicians and other personnel who have knowledge of trade secrets of the Unit. The scope, territory and term of the non-competition provisions shall be agreed upon by the Unit and the laborer, and such agreement shall not violate laws and regulations.

The term, beginning from the termination of the labor contract, for which a person shall be subject to non-competition provisions in terms of his working for a competing Unit that either produces the same type of products or is engaged in the same type of business as his current Unit, or in terms of his establishing his own business to produce products or engage in business competing with his current Unit's products or business, shall not exceed two years.

Article 25. With the exception of the circumstances specified in Articles 22 and 23 hereof, a Unit may not stipulate with a laborer damages which the laborer is required to bear.

Article 26. A labor contract shall be invalid or partially invalid if:

- (1) one party uses such means as fraud, coercion or taking advantage of the other party's unfavorable position to sign the labor contract against his or her genuine will;
- (2) the Unit disclaims its mandatory liability and denies the laborer his rights;
- (3) the labor contract violates laws or administrative regulations.

The invalidity or partial invalidity of a labor contract shall be confirmed by a Labor Dispute Arbitration institution or the People's Court.

Article 27. If certain provisions of a labor contract are invalid and such invalidity does not affect the validity of the remaining provisions, the remaining provisions shall still remain valid.

Article 28. If a labor contract is confirmed as invalid and the laborer has already performed labor, the Unit shall pay the laborer labor remuneration. The amount of labor remuneration shall be determined with reference to the labor remuneration of laborers in the same or similar position with the Unit.

CHAPTER 3. PERFORMANCE AND MODIFICATION OF LABOR CONTRACTS

Article 29. The Unit and the laborer shall each fully perform its/his obligations in accordance with the labor contract.

Article 30. Units shall pay labor remuneration on time and in full accordance with state regulations and the labor contract.

If a Unit is in arrears or fails to make full payment for the labor remuneration of a laborer, the laborer may apply to the local People's Court for an order to pay. The People's Court ought to issue an order to pay under law.

Article 31. Units shall strictly implement the work quota standards and may not force laborers to work a disguised form of overtime. If a Unit arranges for a laborer to work overtime, it shall pay him overtime pay in accordance with the relevant state regulations.

Article 32. It is not regarded as a breach of the labor contract if the laborer refuses to perform dangerous operations which violate regulations as directed or ordered by management staff of the Unit.

Laborers have the right to criticize, report to the authorities or lodge accusations concerning working conditions that endanger their lives or health.

Article 33. A change in the name, the legal representative, the main person in charge, investor, or the registered or recorded particulars of a Unit shall not affect the performance of its labor contracts.

Article 34. If a Unit is merged or divided, etc., its existing labor contracts shall remain valid and continue to be performed by the Unit(s) which assumes its rights and obligations.

Article 35. A Unit and a laborer may modify the provisions of their labor contract if they so agree after consultations. When a labor contract is modified, the amended provisions shall be recorded in written form.

The Unit and the laborer shall each hold one copy of the modified contract.

CHAPTER 4. TERMINATION AND DISSOLUTION OF LABOR CONTRACTS

Article 36. A Unit and a laborer may dissolve their labor contract if they so unanimously agree after consultations.

Article 37. A laborer may dissolve his labor contract by giving 30 days notice in writing to his Unit. During his probation period, a laborer may dissolve his labor contract at any time by informing his Unit.

Article 38. In any of the following circumstances, a laborer may dissolve his labor contract at any time if:

- (1) the Unit fails to provide labor protections and working conditions in accordance with the labor contract;
- (2) the Unit fails to pay labor remuneration in full and on time;
- (3) the Unit fails to pay the social insurance premiums for the laborer in accordance with the law;

(4) the rules and regulations of the Unit violate laws or regulations, thereby harming the laborer's rights and interests;

(5) any of the conditions specified in Item 1 of Article 26 are met; or

(6) other circumstances as specified in laws or administrative statutes enable the laborer to dissolve the labor contract.

If a Unit uses violence, intimidation or unlawful restriction of personal freedom to compel a laborer to work, or if a laborer is instructed in violation of rules and regulations or peremptorily ordered by his Unit to perform dangerous operations which will endanger his personal safety, the laborer may dissolve his labor contract forthwith without giving prior notice to the Unit.

Article 39. A Unit may dissolve a labor contract if the laborer:

(1) is proved during the probation period not to satisfy the requirements of employment;

(2) materially breaches the Unit's rules and regulations;

(3) commits serious dereliction of duty or practices graft or corruption, causing substantial damage to the Unit's interests;

(4) has additionally established a labor relationship with another Unit which materially affects the completion of his tasks or refuses to rectify the matter when brought to his attention by the Unit;

(5) causes the labor contract to be invalid due to reasons specified in the Article 26, Sub-Article 1, Item 1 of this law; or

(6) has his criminal liability investigated in accordance with the law.

Article 40. A Unit may dissolve a labor contract by giving the laborer 30 days prior written notice, or one month's wage in lieu of notice, if:

(1) after the regulated period of medical leave for an illness or non-work related injury expires, the laborer is incapable of performing his original work or is incapable of performing a new job as arranged by the Unit;

(2) the laborer is proved incompetent and remains incompetent after training or adjustment of his position; or

(3) a major change in the objective circumstances relied upon at the time of

conclusion of the labor contract hinders continued fulfillment of the original contract and, after consultations, the Unit and laborer are unable to reach agreement on amending the labor contract.

Article 41. If any of the following circumstances obstruct implementation of the labor contract and make it necessary to reduce the workforce by 20 persons or more or by a number of persons that is less than 20 but accounts for 10 percent or more of the total number of the enterprise's employees, the Unit shall explain the circumstances to its labor union or to all of its employees 30 days in advance, and it may reduce the workforce after considering the opinions of the labor union or the employees and subsequently reporting the workforce reduction plan to the labor administration department:

- (1) restructuring pursuant to the Enterprise Bankruptcy Law;
- (2) serious difficulties in production and/or business operations;
- (3) staff reduction is still necessary after modification of contract due to changes in the enterprise's production, technological innovation or adjustment of management operation style; or
- (4) other major changes in the objective economic circumstances relied upon at the time of conclusion of the labor contracts, rendering them non-performable.

When reducing the workforce, the Unit shall retain employment relations with priority laborers:

- (1) who have concluded relatively long-term fixed-term labor contracts with the Unit;
- (2) who have concluded non-fixed term labor contracts; or
- (3) who are the sole wage earner in their families and/or who have a dependant elderly person or minor for whom they are responsible.

If the Unit resumes hiring within six months, it shall give notification to the reduced employees and give preference to the persons dismissed at the time of the reduction.

Article 42. A Unit may not dissolve a labor contract pursuant to Article 40 or Article 41 hereof if the laborer:

- (1) is engaged in operations exposing him to occupational hazards and has not undergone a pre-departure occupational health check-up, or is suspected of having contracted an occupational disease and is being diagnosed or under medical observation;

- (2) has been confirmed as having lost or partially lost his capacity to work due to an occupational disease or a work-related injury;
- (3) has contracted an illness or sustained a non-work related injury, and the mandatory medical treatment period has not expired;
- (4) is a female employee in her pregnancy, delivery, postpartum, or lactation period;
- (5) has been working for the Unit continuously for no less than 15 years and is less than 5 years away from his mandatory retirement age;
- (6) finds himself in other circumstances stipulated in laws or administrative regulations.

Article 43. When a Unit is to dissolve a labor contract unilaterally, it shall give the labor union notice of the reasons in advance. If the Unit violates laws, administrative regulations or the labor contract, the labor union has the right to demand that the Unit rectify the matter. The Unit shall study the labor union's opinions and notify the labor union in writing as to the outcome of its handling of the matter.

Article 44. A labor contract terminates if:

- (1) its term expires;
- (2) the laborer has started receiving basic old age insurance pension in accordance with the law;
- (3) the laborer dies, or is declared dead or missing by a People's Court;
- (4) the Unit is declared bankrupt according to law;
- (5) the Unit has its business license revoked, is ordered to close down or decides to dissolve ahead of schedule; or
- (6) other circumstances specified in laws or administrative laws and regulations arise.

Article 45. If a labor contract expires but any of the circumstances specified in Article 42 hereof apply, the term of the labor contract shall be extended in accordance with the law until the relevant circumstance ceases, at which point the contract terminates. But the termination of the labor contract of the laborer, as specified in Article 42, Item 2, who has been confirmed as having partially lost his capacity to work shall be subject to relevant regulations of work-related injury insurance.

Article 46. In any of the following circumstances, the Unit shall pay economic compensation at the rate prescribed by the State Council:

- (1) the labor contract is dissolved by the laborer pursuant to Article 38 hereof;
- (2) the labor contract is dissolved by the Unit pursuant to Article 40 hereof;
- (3) the labor contract is dissolved by the Unit pursuant to the first paragraph of Article 41 hereof;
- (4) the labor contract is dissolved after such dissolution was proposed to the laborer by the Unit and the parties reached a consensus thereon;
- (5) a fixed term labor contract is terminated pursuant to Article 44, Item 1 hereof, except in the case where the laborer does not agree to renew the contract even if the Unit proposes to renew the labor contract while maintaining or improving the conditions stipulated in the current contract; or
- (6) the labor contract dissolves or terminates pursuant to Article 44, Items 4 and 5 hereof.

Article 47. The economic compensation calculation rate is based on the number of years the laborer worked in the Unit. Economic compensation equivalent to one month's wages should be paid to the laborer for every one year he has worked in the Unit. The economic compensation for a laborer who worked less than one year but more than six months is equivalent to the calculation based on one year of work; the economic compensation for a laborer who has worked for less than six months is equivalent to half of the above monthly wage.

If a laborer earns a monthly wage that is more than 3 times the average monthly wage of the municipality or in the city with districts where the Unit is located, the economic compensation paid should be 3 times the average monthly wage, and the calculation for economic compensation should calculate the number of years worked as maximum 12 years.

The compensation wage mentioned hereof refers to the average monthly wage over the 12 months prior to termination of the labor contract.

Article 48. If a Unit dissolves or terminates a labor contract in violation of this Law and the laborer demands continued performance of such contract, the Unit shall continue performing under the contract. If the laborer does not demand continued performance of the labor contract or if performance of the labor contract has become impossible, the Unit shall pay damage compensation to the laborer according to Article 87 of this Law.

Article 49. The state will gradually adopt measures to establish and strengthen the system that enables the laborers' social insurance relationships to transfer across regions.

Article 50. The Unit shall issue a certificate proving the termination of the labor contract at the point when the labor contract is terminated and, within fifteen days, shall carry out the procedures for the transferal of the laborer's file and social insurance.

The laborer shall carry out the handover of his work as agreed by the parties. If the Unit is required to pay economic compensation, it shall pay the same to the laborer upon completion of the procedures for the handover of the work.

The Unit shall keep terminated labor contracts on file for no less than two years for record keeping purposes.

CHAPTER 5. SPECIAL PROVISIONS

Section 1. Collective Contracts

Article 51. After bargaining on an equal basis, enterprise employees, as one party, and the Unit will enter into a collective contract on such matters as labor remuneration, working hours, rest, leave, work safety and hygiene, insurance, benefits, etc. The draft of the collective contract shall be presented to the employee representative congress or all the employees for discussion and approval.

A collective contract shall be executed by the labor union, on behalf of the enterprise's employees, and the Unit. If the Unit has not yet established a labor union, it shall execute the collective contract with a representative put forward by the laborers.

Article 52. Enterprise employees, as one party, and their Unit may enter into specialized collective contracts addressing labor safety and hygiene, the protection of the rights and interests of female workers, the wage adjustment mechanism, etc.

Article 53. Industry-wide collective contracts may be concluded between the labor union on the one hand and representatives of the enterprises on the other hand in industries such as construction, mining, catering services, etc. within areas below the county level.

Article 54. After a collective contract has been engaged, it shall be submitted to the Labor Administration Department. The collective contract shall become effective

fifteen days from the date of receipt thereof by the Labor Administration Department, unless the said authority raises any objections to the contract.

A collective contract that has been engaged in accordance with the law shall be binding on the Unit and the laborers. Industry-wide or regional collective contracts will have binding effect on local Units and laborers throughout the industry or region.

Article 55. The standards for working conditions, rates for labor remuneration, etc. stipulated in a collective contract may not be lower than the minimum standards and rates prescribed by the local people's government. The standards for working conditions, rates for labor remuneration, etc. stipulated in the labor contract between a Unit and a laborer may not be lower than those stipulated in the collective contract.

Article 56. If a Unit's breach of the collective contract infringes upon the labor rights and interests of the employees, the labor union may, in accordance with the law, demand that the Unit assume liability. If a dispute arising from the performance of the collective contract is not resolved following consultations, the labor union may apply for arbitration or institute an action according to law.

Section 2. Labor Dispatching Contracts

Article 57. Dispatching Units shall be established in accordance with the relevant provisions of the Company Law and shall have registered capital of no less than RMB ¥ 500,000.

Article 58. Dispatching Units are laborer employing Units as mentioned in this Law and shall perform a Unit's obligations toward its laborers. The labor contract between a dispatching Unit and a laborer to be dispatched shall, in addition to the matters specified in Article 17 hereof, specify matters such as the Unit to which the laborer will be dispatched, the term of his dispatching, his position, etc.

The labor contracts between dispatching Units and the laborers to be dispatched shall be fixed term labor contracts with a term of no less than two years. Dispatching Units shall pay labor remuneration on a monthly basis. The labor remuneration paid by dispatching Units for periods during which there is no work may not be lower than the local minimum wage rate announced by the people's government where the dispatching Unit is located.

Article 59. When dispatching laborers, dispatching Units shall enter into dispatching agreements with the Units to which the laborer is dispatched. The dispatching agreements shall specify the job positions for which laborers are dispatched, the number of persons dispatched, the terms of dispatching, the amounts and methods of payments for labor remuneration and social insurance premiums, and the liability for breach of the agreement.

A Unit to which a laborer is dispatched shall decide with the dispatching Unit on the term of labor dispatching based on the actual requirements of the job position, and it may not enter into several short term labor dispatching agreements to cover a continuous term of labor use.

Article 60. Dispatching Units have an obligation to inform the dispatched laborers of the relevant content of the dispatching agreement.

Dispatching Units may not appropriate portions of the labor remuneration that a Unit to which a laborer is dispatched pays to that laborer in accordance with the labor dispatching agreement.

Dispatching Units and the Units to which laborers are dispatched may not charge fees to dispatched laborers.

Article 61. If a dispatching Unit dispatches a laborer to a Unit in another region, the laborer's working conditions and labor remuneration shall be in accordance with the standards and rates of the region where the said Unit is located.

Article 62. Units to which laborers are dispatched shall perform the following obligations:

- (1) implement state labor standards and provide the corresponding working conditions and labor protections;
- (2) inform dispatched laborers of the job requirements and labor remuneration;
- (3) pay overtime pay and performance bonuses and provide benefits appropriate for the job positions;
- (4) provide the dispatched laborers who are on the job with the training necessary for their job positions; and
- (5) in cases of continuous labor dispatching, implement a normal wage adjustment mechanism.

Units to which laborers are dispatched may not in turn dispatch the laborers to other Units that use labor.

Article 63. Dispatched laborers shall have the right to receive equal pay for equal work as other laborers in the Unit. If a Unit to which a laborer has been dispatched has no other laborer in the same position, the labor remuneration shall be determined with reference to the labor remuneration of laborers in the same or similar position where the Unit is located.

Article 64. Dispatched laborers have the right to lawfully join the labor union of their dispatching Unit or the Unit to which they have been dispatched or to organize such unions, so as to protect their own legal rights and interests.

Article 65. Dispatched laborers may dissolve their labor contracts with their dispatching Units pursuant to Article 36 and Article 38 hereof.

If any of the circumstances provided for in Article 39 or Article 40, Items 1 or 2 hereof apply to a dispatched laborer, the Unit to which he is dispatched may return him to the dispatching Unit, which may dissolve its labor contract with the dispatched worker in accordance with the relevant provisions hereof.

Article 66. The labor dispatching of laborers shall generally be practiced for temporary, auxiliary or substitute job positions. The specific job positions shall be prescribed by the State Council's Labor Administration Department.

Article 67. Units that use labor may not establish their own dispatching Units and dispatch workers to their own Unit or their subordinate Units.

Section 3. Non-Full Time Labor Use

Article 68. The term "non-full time labor use" means a form of labor for which the compensation is chiefly calculated by the hour and where the laborer generally averages no more than four hours of work per day and no more than an aggregate twenty-four hours of work per week in the same Unit.

Article 69. Agreements for non-full time labor may be concluded orally.

A laborer who engages in non-full time labor may enter into a labor contract with one or more Units, but a subsequently executed labor contract may not prejudice or harm the rights and obligations under a previously executed labor contract.

Article 70. No probation period may be stipulated for non-full time labor.

Article 71. Either party may terminate the use of the labor by notice to the other party at any time. No economic compensation shall be payable upon termination of the employment.

Article 72. The standard of hourly remuneration for non-full time laborers may not be lower than minimum per hour remuneration standard set by the people's government where the Unit is located.

The labor remuneration settlement cycle for non-full time labor may not exceed 15 days.

CHAPTER 6. SUPERVISION AND INSPECTIONS

Article 73. The State Council's Labor Administration Department shall be responsible for overseeing the implementation of the labor contract system.

The Labor Administration authorities of local people's governments at the county level and above shall be responsible for overseeing the implementation of the labor contract system in their respective jurisdictions.

In the course of overseeing the implementation of the labor contract system, the Labor Administration authorities of people's governments at the county level and above shall consider the opinions of the labor unions, enterprise representatives and the authorities in charge of the industries concerned.

Article 74. The Labor Administration authorities of local people's governments at the county level and above shall conduct supervision and inspections of the implementation of the following aspects of the labor contract system, in accordance with the law:

- (1) Units' formulation of labor rules and regulations that concern the direct interests of the laborers;
- (2) the signing and termination of labor contracts by Units and laborers;
- (3) compliance with relevant regulations on labor dispatching by dispatching Units and Units to which laborers are dispatched;
- (4) Units' compliance with regulations on working hours, rest and leave;
- (5) Units' payment of labor remuneration as specified in the labor contract and compliance with minimum wage rates;
- (6) Units' enrollment in the various types of social insurance and payment of social insurance premiums; and
- (7) labor matters requiring supervision and inspections, as specified in laws and administrative regulations.

Article 75. The Labor Administration Department of a local people's government at the county level or above conducting supervision and inspection has the authority to review materials relating to the labor contracts and collective contracts and conduct an on-the-spot inspection of the work premises. Both the Unit and the laborers shall truthfully provide relevant information and materials.

When staff members of a Labor Administration Department conduct supervision and inspection, they shall show their official identification and shall enforce the law in a legal and well-disciplined manner.

Article 76. Such responsible authorities as construction authorities, health authorities, production safety regulators, etc. of people's governments at the county level and above shall, to the extent of their respective purviews, oversee the implementation of the labor contract system by Units.

Article 77. Once the laborer's legitimate rights and interests have been infringed upon, the laborer has the right to demand that a relevant department handle the affair or to apply for arbitration and file litigation.

Article 78. Labor unions shall safeguard the lawful rights and interests of laborers in accordance with the law and monitor the performance of the labor contracts and collective contracts by Units. If a Unit violates labor laws or statutes or breaches a labor contract or collective contract, the labor union has the right to voice its opinion or require that the matter be reviewed. If a laborer applies for arbitration or institutes an action, the labor union shall provide support and assistance in accordance with the law.

Article 79. All organizations and individuals are entitled to report violations of this Law. The Labor Administration authorities of people's governments at the county level and above shall verify and handle the violations reported in a timely manner and reward those persons whose reports have merit.

CHAPTER 7. LEGAL LIABILITY

Article 80. If a labor rule or regulation formulated by a Unit that directly relates to the interests of laborers violates laws or administrative regulations, such rule or regulation shall be invalid and the labor administration department shall issue a warning and order rectification. If the rule or regulation caused a laborer to suffer harm, the Unit will be liable for damages.

Article 81. If the text of a labor contract provided by a Unit lacks any of the mandatory clauses which this Law requires to be included in such contracts or if the Unit fails to provide the laborer the written text of the labor contract, the Labor Administration Department shall order rectification; if the laborer suffered harm as a result thereof, the Unit will be liable for damages.

Article 82. If a Unit fails to reach a written labor contract with a laborer after one month but within one year of carrying out the employment procedures, it shall pay the laborer twice the amount of due remuneration for his labor.

If a Unit fails to reach a non-fixed term labor contract with the laborer in violation of this Law, it should pay the laborer twice the amount of the original labor remuneration from the date when the non-fixed labor contract should have been signed.

Article 83. If the probation period stipulated by a Unit with a laborer violates this Law, the Labor Administration Department shall order the Unit to rectify the matter in accordance with this Law. If the illegally stipulated probation period has been performed, the Unit shall pay damage compensation to the laborer based on the laborer's monthly post-probation period wage rate and the length of the illegally stipulated probation period.

Article 84. If the employing Unit retains a laborer's identification card or other personal documents in violation of this law, the Public Security Organ shall order the Unit to return the documents to the laborer and may impose a penalty on the Unit according to the relevant laws.

If a Unit violates this Law by requiring laborers to provide guarantees or collateral, demanding property from laborers or retaining their identification cards or other papers, the Labor Administration Department shall order the same returned to the laborers within a specified period of time and impose a fine on the Unit of no less than RMB ¥500 and no more than RMB ¥2,000 for each laborer. If the laborers suffered harm as a result of the Unit's conduct, the Unit will be liable for damages.

If a Unit retains a laborer's file or other article after he has dissolved his labor contract in accordance with the law, a penalty shall be imposed in accordance with the preceding paragraph.

Article 85. If a Unit:

- (1) fails to pay a laborer labor remuneration as stipulated in the labor contract or provided for in this Law;
- (2) pays labor remuneration below the local minimum wage rate;
- (3) arranges overtime work without paying overtime pay; or
- (4) dissolves or terminates a labor contract without paying the laborer economic compensation pursuant to this Law;

then the Labor Administration Department shall order it to pay the labor remuneration, overtime pay or economic compensation within a specified period of time. If the labor remuneration is lower than the local minimum wage rate, the Unit shall pay the difference. If payment is not made within the determined time limit, the Unit shall be

ordered to pay additional damages to the laborer at a rate of no less than 50 percent and no more than 100 percent of the amount payable.

Article 86. If the signed labor contract is confirmed to be invalid according to Article 26 of this law and any loss has been incurred, the party at fault should assume financial responsibility.

Article 87. If a Unit dissolves or terminates the labor contract in violation of this Law, it shall pay damage compensation to the laborer at twice the rate of the economic compensation provided for in Article 47 hereof.

Article 88. If a Unit:

(1) uses violence, intimidation or unlawful restriction of personal freedom to compel a laborer to work;

(2) instructs or peremptorily orders a laborer to perform dangerous operations which threaten his personal safety in violation of rules and regulations;

(3) insults, corporally punishes, beats, illegally searches or detains a laborer; or

(4) causes serious physical or mental injury to laborers due to poor quality working conditions or a seriously polluted working environment

then administrative punishment should be imposed. If such conduct constitutes a criminal offense, criminal liability shall be pursued according to law. If the laborer suffers harm as a result of the said conduct on the part of the Unit, the Unit will be liable for damages.

Article 89. If a Unit fails to issue to a laborer a certificate evidencing the dissolution or termination of his labor contract as required in this law, the Labor Administration Department shall order rectification. If the laborer suffers harm as the result of such failure, the Unit will be liable for damages.

Article 90. If a laborer dissolves his labor contract in violation of this Law or breaches the confidentiality obligations or non-competition stipulated in his labor contract, and if such violation or breach causes his Unit to suffer loss, the laborer will be liable for damages.

Article 91. If a Unit hires a laborer whose labor contract with another Unit has not yet been terminated or dissolved, causing the original Unit to suffer a loss, it shall bear joint and several liability for damage.

Article 92. If a labor dispatching Unit violates this Law, the Labor Administration

Department shall order it to rectify the situation within a specified period of time. If the circumstances are serious, it shall impose a fine of no less than RMB ¥ 1,000 and no more than RMB ¥ 5,000 for each laborer, and the Administration Department for Industry and Commerce shall revoke the business license. If the rights and interests of the dispatched laborer(s) are harmed, the labor dispatching Unit shall bear joint and several liability together with the labor using Unit.

Article 93. If an illegal action of an employing Unit without a business license constitutes a crime, criminal liability should be imposed under law. If the laborers have already performed labor, the Unit being dealt with or its financial sponsor shall pay them labor remuneration, economic compensation and damage compensation. If any loss was caused to the laborer, the Unit shall bear damage compensation liability.

Article 94. If the individual contractor recruits laborers in violation of this law and causes loss to the laborers, the individual or organization of the contract-issuing party is jointly and severally liable for economic damages.

Article 95. If the Labor Administration Department, other related departments or personnel of the Department fail(s) to fulfill its/their legal responsibility or exercises its/their power in violation of the law, thereby infringing upon the lawful rights and interests of a Unit or a laborer, it/they will be liable for damages. The leading official directly in charge and the other persons directly responsible shall be subjected to administrative penalties in accordance with the law. If a criminal offense is constituted, criminal liability shall be pursued in accordance with the law.

CHAPTER 8. SUPPLEMENTARY PROVISIONS

Article 96. Where the laws, administrative regulations or State Council have formulated separate, special regulations concerning pinyong hiring contracts practiced by public institutions, such regulations shall prevail.

Article 97. Those labor relationships that are established before the implementation of this law and are continuing on the day this law is put into effect are still effective.

The number of times a fixed-term labor contract is consecutively concluded as mentioned in Item 3, Article 14 is calculated from the date of the first labor contract renewal after the implementation of this law.

For those labor relations established before the implementation of this law without written labor contracts, the parties involved should sign a written labor contract within one month of the implementation of this law.

If the labor contract continuing on the date when this law is put into effect is terminated or dissolved after the implementation of this law and if economic

compensation should be paid according to Article 46 hereof, the number of working years on which the economic compensation calculation is based should be counted from the date when this law is implemented. If, according to the regulations, the Unit is obligated to pay economic compensation to laborers before the implementation of this law, the regulation at that time shall prevail.

Article 98. This Law shall be implemented from Jan.1st 2008.

Translated by:

Dong Bao Hua Legal Center at East China University of Politics and Law
and

Ashley Russell, M.R.P. Cornell University

July 2007