

# LAW OF THE PEOPLE'S REPUBLIC OF CHINA

## ON LABOUR CONTRACTS

Adopted at the 28th Session of the Standing Committee of the 10th National People's Congress on June 29, 2007

Effective from January 1, 2008

### CHAPTER 1 GENERAL PROVISIONS

#### Article 1

This Law has been formulated in order to improve the employment contract system, to specify the rights and obligations of the parties to labour contracts, to protect the lawful rights and interests of Employees and to build and develop harmonious and stable employment relationships.

#### Article 2

This Law governs the establishment of employment relationships between, and the conclusion, performance, amendment, termination and ending of labour contracts by, organizations such as enterprises, individual economic organizations and private non-enterprise units in the People's Republic of China ("Employers") on the one hand and Employees in the People's Republic of China on the other hand.

The conclusion, performance, amendment, termination and ending of labour contracts by state authorities, institutions or social organizations on the one hand and Employees with whom they establish employment relationships on the other hand, shall be handled pursuant to this Law.

#### Article 3

The conclusion of labour contracts shall comply with the principles of lawfulness, fairness, equality, free will, negotiated consensus and good faith.

A lawfully concluded employment contract is binding, and both the Employer and the Employee shall perform their

respective obligations stipulated therein.

#### Article 4

Employers shall establish and improve internal rules and regulations, so as to ensure that Employees enjoy their labor rights and perform their labor obligations.

When an Employer formulates, revises or decides on rules and regulations, or material matters, that have a direct bearing on the immediate interests of its Employees, such as those concerning compensation, work hours, rest, leave, work safety and hygiene, insurance, benefits, employee training, work discipline or work quota management, the same shall be discussed by the employee representative congress or all the employees. The employee representative congress or all the employees, as the case may be, shall put forward a proposal and comments, whereupon the matter shall be determined through consultations with the Trade union or employee representatives conducted on a basis of equality.

If, during the implementation of an Employer's rule or regulation or decision on a crucial matter, the Trade union or an employee is of the opinion that the same is inappropriate, it or he is entitled to communicate such opinion to the Employer, and the rule, regulation or decision shall be improved by making amendments after consultations.

Rules and regulations, and decisions on material matters, that have a direct bearing on the immediate interests of Employees shall be made public or be communicated to the Employees by the Employer.

#### Article 5

The labor administration authorities of People's Governments at the county level and above, together with the Trade union and enterprise representatives, shall establish a comprehensive tri-partite mechanism for the coordination of employment relationships, in order to jointly study and resolve major issues concerning employment relationships.

#### Article 6

A Trade union shall assist and guide Employees in the conclusion of labour contracts with their Employer and the performance thereof in accordance with the law, and establish a collective bargaining mechanism with the Employer in order to safeguard the lawful rights and interests of Employees.

## **CHAPTER 2 CONCLUSION OF LABOUR CONTRACTS**

#### Article 7

An Employer's employment relationship with a Employee is established on the date it starts using the Employee. An Employer shall keep a register of employees, for reference purposes.

#### Article 8

When an Employer hires a Employee, it shall truthfully inform him as to the content of the work, the working conditions,

the place of work, occupational hazards, production safety conditions, labor compensation and other matters which the Employee requests to be informed about. The Employer has the right to learn from the Employee basic information which directly relates to the employment contract, and the Employee shall truthfully provide the same.

#### Article 9

When hiring a Employee, an Employer may not retain the Employee's resident ID card or other papers, nor may it require him to provide security or collect property from him under some other guise.

#### Article 10

To establish an employment relationship, a written employment contract shall be concluded.

In the event that no written employment contract was concluded at the time of establishment of an employment relationship, a written employment contract shall be concluded within one month after the date on which the Employer starts using the Employee.

Where an Employer and a Employee conclude an employment contract before the Employer starts using the Employee, the employment relationship shall be established on the date on which the Employer starts using the Employee.

#### Article 11

In the event that an Employer fails to conclude a written employment contract with a Employee at the time its starts to use him, and it is not clear what labor compensation was agreed upon with the Employee, the labor compensation of the new Employee shall be decided pursuant to the rate specified in the collective contract; where there is no collective contract or the collective contract is silent on the matter, equal pay shall be given for equal work.

#### Article 12

Labour contracts are divided into fixed-term labour contracts, open-ended labour contracts and labour contracts to expire upon completion of a certain job.

#### Article 13

A "fixed-term employment contract" is an employment contract whose ending date is agreed upon by the Employer and the Employee.

An Employer and a Employee may conclude a fixed-term employment contract upon reaching a negotiated consensus.

#### Article 14

An "open-ended employment contract" is an employment contract for which the Employer and the Employee have agreed not to stipulate a definite ending date.

An Employer and a Employee may conclude an open-ended employment contract upon reaching a negotiated consensus. If a Employee proposes or agrees to renew his employment contract or to conclude an employment contract in any of the following circumstances, an open-ended employment contract shall be concluded, unless the Employee requests the conclusion of a fixed-term employment contract:

- (1) The Employee has been working for the Employer for a consecutive period of not less than 10 years;
- (2) when his Employer introduces the employment contract system or the state owned enterprise that employs him re-concludes its labour contracts as a result of restructuring, the Employee has been working for the Employer for a consecutive period of not less than 10 years and is less than 10 years away from his legal retirement age; or
- (3) prior to the renewal, a fixed-term employment contract was concluded on two consecutive occasions and the Employee is not characterized by any of the circumstances set forth in Article 39 and items (1) and (2) of Article 40 hereof.

If an Employer fails to conclude a written employment contract with a Employee within one year from the date on which it starts using the Employee, the Employer and the Employee shall be deemed to have concluded an open-ended employment contract.

#### Article 15

An "employment contract with a term to expire upon completion of a certain job" is an employment contract in which the Employer and the Employee have agreed that the completion of a certain job is the term of the contract.

An Employer and a Employee may, upon reaching a negotiated consensus, conclude an employment contract with a term to expire upon completion of a certain job.

#### Article 16

An employment contract shall become effective when the Employer and the Employee have reached a negotiated consensus thereon and each of them has signed or sealed the text of such contract.

The Employer and the Employee shall each hold one copy of the employment contract.

#### Article 17

An employment contract shall specify the following matters:

- (1) The name, domicile and legal representative or main person in charge of the Employer;
- (2) The name, domicile and number of the resident ID card or other valid identity document of the Employee;
- (3) The term of the employment contract;

- (4) The job description and the place of work;
- (5) Working hours, rest and leave;
- (6) Labor compensation;
- (7) Social insurance;
- (8) Labor protection, working conditions and protection against occupational hazards; and
- (9) Other matters which laws and statutes require to be included in labour contracts.

In addition to the requisite terms mentioned above, an Employer and a Employee may agree to stipulate other matters in the employment contract, such as probation period, training, confidentiality, supplementary insurance and benefits, etc.

#### Article 18

If a dispute arises due to the fact that the rate or standards for labor compensation or working conditions, etc. are not explicitly specified in the employment contract, the Employer and the Employee may renegotiate. If the negotiations are unsuccessful, the provisions of the collective contract shall apply. If there is no collective contract or the collective contract is silent on the issue of labor compensation, equal pay shall be given for equal work; if there is no collective contract or the collective contract is silent on the issue of working conditions, the relevant regulations of the state shall apply.

#### Article 19

If an employment contract has a term of not less than three months but less than one year, the probation period may not exceed one month; if an employment contract has a term of more than one year and less than three years, the probation period may not exceed two months; and if an employment contract has a term of not less than three years or is open-ended, the probation period may not exceed six months.

An Employer may stipulate only one probation period with any given Employee.

No probation period may be specified in an employment contract with a term to expire upon completion of a certain job or an employment contract with a term of less than three months.

The probation period shall be included in the term of the employment contract. If an employment contract provides for a probation period only, then there is no probation period and the term concerned shall be the term of the employment contract.

#### Article 20

The wages of a Employee on probation may not be less than the lowest wage level for the same job with the Employer

or less than 80 percent of the wage agreed upon in the employment contract, and may not be less than the minimum wage rate in the place where the Employer is located.

#### Article 21

An Employer may not terminate an employment contract during the probation period unless the Employee is characterized by any of the circumstances set forth in Article 39 and items (1) and (2) of Article 40 hereof. If an Employer terminates an employment contract during the probation period, it shall explain the reasons to the Employee.

#### Article 22

If an Employer provides special funding for a Employee's training and gives him professional technical training, it may conclude an agreement specifying a term of service with such Employee.

If the Employee breaches the agreement on the term of service, he shall pay liquidated damages to the Employer as agreed. The measure of the liquidated damages may not exceed the training expenses paid by the Employer. The liquidated damages that the Employer requires the Employee to pay may not exceed the portion of the training expenses allocable to the unperformed portion of the term of service.

The reaching of agreement on a term of service between the Employer and the Employee does not affect the raising of the Employee's labor compensation during the term of service according to the normal wage adjustment mechanism.

#### Article 23

An Employer and a Employee may include in their employment contract provisions on confidentiality matters relating to maintaining the confidentiality of the trade secrets of the Employer and to intellectual property.

If a Employee has a confidentiality obligation, the Employer may agree with the Employee on competition restriction provisions in the employment contract or confidentiality agreement, and stipulate that the Employer shall pay financial compensation to the Employee on a monthly basis during the term of the competition restriction after the termination or ending of the employment contract. If the Employee breaches the competition restriction provisions, he shall pay liquidated damages to the Employer as stipulated.

#### Article 24

The personnel subject to competition restrictions shall be limited to the Employer's senior management, senior technicians and other personnel with a confidentiality obligation. The scope, territory and term of the competition restrictions shall be agreed upon by the Employer and the Employee, and such agreement shall not violate laws and regulations.

The term, counted from the termination or ending of the employment contract, for which a person as mentioned in the preceding paragraph is subject to competition restrictions in terms of his working for a competing Employer that produces the same type of products or is engaged in the same type of business as his current Employer, or in terms of his establishing his own business to produce the same type of products or engage in the same type of business, shall

not exceed two years.

#### Article 25

With the exception of the circumstances specified in Articles 22 and 23 hereof, an Employer may not stipulate with a Employee provisions on the bearing of liquidated damages by the Employee.

#### Article 26

An employment contract shall be invalid or partially invalid if:

(1) A party uses such means as deception or coercion, or takes advantage of the other party's difficulties, to cause the other party to conclude an employment contract, or to make an amendment thereto, that is contrary to that party's true intent;

(2) The Employer disclaims its legal liability or denies the Employee his rights; or

(3) Mandatory provisions of laws or administrative statutes are violated.

If the invalidity or partial invalidity of the employment contract is disputed, it shall be confirmed by a labor dispute arbitration institution or a People's Court.

#### Article 27

If certain provisions of an employment contract are invalid and such invalidity does not affect the validity of the remaining provisions, the remaining provisions shall remain valid.

#### Article 28

If an employment contract is confirmed as invalid and the Employee has already performed labor, the Employer shall pay the Employee labor compensation. The amount of labor compensation shall be determined with reference to the labor compensation of Employees in the same or a similar position with the Employer.

### **CHAPTER 3 PERFORMANCE AND AMENDMENT OF LABOUR CONTRACTS**

#### Article 29

The Employer and the Employee shall each fully perform its/his obligations in accordance with the employment contract.

#### Article 30

Employers shall pay their Employees labor compensation on time and in full in accordance with the labour contracts and state regulations.

If an Employer falls into arrears with the payment of labor compensation or fails to make payment in full, the Employee may, in accordance with the law, apply to the local People's

Court for an order to pay; and the People's Court shall issue such order in accordance with the law.

#### Article 31

Employers shall strictly implement the work quota standards and may not compel or in a disguised manner compel Employees to work overtime. If an Employer arranges for a Employee to work overtime, it shall pay him overtime pay in accordance with the relevant state regulations.

#### Article 32

Employees shall not be held in breach of their labour contracts if they refuse to perform dangerous operations that are instructed in violation of regulations or peremptorily ordered by management staff of the Employer.

Employees have the right to criticize, report to the authorities or lodge accusations against their Employers in respect of working conditions that endanger their lives or health.

#### Article 33

Changes such a change in the name, legal representative or main person in charge of, or an (the) investor(s) in, an Employer shall not affect the performance of its labour contracts.

#### Article 34

If an Employer is merged or divided, etc., its existing labour contracts shall remain valid and continue to be performed by the Employer(s) which succeeded to its rights and obligations

#### Article 35

An Employer and a Employee may amend the provisions of their employment contract if they so agree after consultations. Amendments to an employment contract shall be made in writing.

The Employer and the Employee shall each hold one copy of the amended employment contract.

### **CHAPTER 4 TERMINATION AND ENDING OF LABOUR CONTRACTS**

#### Article 36

An Employer and a Employee may terminate their employment contract if they so agree after consultations.

#### Article 37

A Employee may terminate his employment contract upon 30 days' prior written notice to his Employer. During his probation period, a Employee may terminate his employment contract by giving his Employer three days' prior notice.

#### Article 38

A Employee may terminate his employment contract if his Employer:

- (1) Fails to provide the labor protection or working conditions specified in the employment contract;
- (2) Fails to pay labor compensation in full and on time;
- (3) Fails to pay the social insurance premiums for the Employee in accordance with the law;
- (4) Has rules and regulations that violate laws or regulations, thereby harming the Employee's rights and interests;
- (5) causes the employment contract to be invalid due to a circumstance specified in the first paragraph of Article 26 hereof;
- (6) Gives rise to another circumstance in which laws or administrative statutes permit a Employee to terminate his employment contract.

If an Employer uses violence, threats or unlawful restriction of personal freedom to compel a Employee to work, or if a Employee is instructed in violation of rules and regulations or peremptorily ordered by his Employer to perform dangerous operations which threaten his personal safety, the Employee may terminate his employment contract forthwith without giving prior notice to the Employer.

#### Article 39

An Employer may terminate an employment contract if the Employee:

- (1) Is proved during the probation period not to satisfy the conditions for employment;
- (2) Materially breaches the Employer's rules and regulations;
- (3) Commits serious dereliction of duty or practices graft, causing substantial damage to the Employer;
- (4) has additionally established an employment relationship with another Employer which materially affects the completion of his tasks with the first-mentioned Employer, or he refuses to rectify the matter after the same is brought to his attention by the Employer;
- (5) causes the employment contract to be invalid due to the circumstance specified in item (1) of the first paragraph of Article 26 hereof; or
- (6) Has his criminal liability pursued in accordance with the law.

#### Article 40

An Employer may terminate an employment contract by giving the Employee himself 30 days' prior written notice, or one month's wage in lieu of notice, if:

- (1) after the set period of medical care for an illness or non-work-related injury, the Employee can engage neither in his original work nor in other work arranged for him by his Employer;
- (2) The Employee is 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 employment contract renders it unperformable and, after consultations, the Employer and Employee are unable to reach agreement on amending the employment contract.

#### Article 41

If any of the following circumstances makes 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 Employer may reduce the workforce after it has explained the circumstances to its Trade union or to all of its employees 30 days in advance, has considered the opinions of the Trade union or the employees and has subsequently reported 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) The enterprise switches production, introduces a major technological innovation or revises its business method, and, after amendment of labour contracts, still needs to reduce its workforce; or
- (4) Another major change in the objective economic circumstances relied upon at the time of conclusion of the labour contracts, rendering them unperformable.

When reducing the workforce, the Employer shall retain with priority persons:

- (1) Who have concluded with the Employer fixed-term labour contracts with a relatively long term;
- (2) Who have concluded open-ended labour contracts with the Employer; or
- (3) Who are the only ones in their families to be employed and whose families have an elderly person or a minor for whom they need to provide.

If an Employer that has reduced its workforce pursuant to the first paragraph hereof hires again within six months, it shall give notice to the persons dismissed at the time of the reduction and, all things being equal, hire them on a preferential basis.

#### Article 42

An Employer may not terminate an employment contract pursuant to Article

40 or Article 41 hereof if the Employee:

(1) is engaged in operations exposing him to occupational disease 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 contracted or a work-related injury sustained with the Employer;

(3) Has contracted an illness or sustained a non-work-related injury, and the set period of medical care therefore has not expired;

(4) Is a female employee in her pregnancy, confinement or nursing period;

(5) Has been working for the Employer continuously for not less than 15 years and is less than 5 years away from his legal retirement age;

(6) Finds himself in other circumstances stipulated in laws or administrative statutes.

#### Article 43

When an Employer is to terminate an employment contract unilaterally, it shall give the Trade union advance notice of the reason therefore. If the Employer violates laws, administrative statutes or the employment contract, the Trade union has the right to demand that the Employer rectify the matter. The Employer shall study the Trade union's opinions and notify the Trade union in writing as to the outcome of its handling of the matter.

#### Article 44

An employment contract shall end if:

(1) Its term expires;

(2) The Employee has commenced drawing his basic old age insurance pension in accordance with the law;

(3) The Employee dies, or is declared dead or missing by a People's Court;

(4) The Employer is declared bankrupt;

(5) The Employer has its business license revoked, is ordered to close or is closed down, or the Employer decides on early liquidation; or

(6) Another circumstance specified in laws or administrative statutes arises.

#### Article 45

If an employment contract expires and any of the circumstances specified in

Article 42 hereof applies, the term of the employment contract shall be extended until the relevant circumstance ceases to exist, at which point the contract shall end. However, matters relating to the ending of the employment contract of a Employee who has lost or partially lost his capacity to work as specified in item (2) of Article 42 hereof shall be handled in accordance with state regulations on work-related injury insurance.

#### Article 46

In any of the following circumstances, the Employer shall pay the Employee severance pay:

(1) The employment contract is terminated by the Employee pursuant to Article 38 hereof;

(2) The employment contract is terminated after such termination was proposed to the Employee by the Employer pursuant to Article 36 hereof and the parties reached agreement thereon after consultations;

(3) The employment contract is terminated by the Employer pursuant to Article 40 hereof;

(4) The employment contract is terminated by the Employer pursuant to the first paragraph of Article 41 hereof;

(5) The employment contract is a fixed-term contract that ends pursuant to item (1) of

Article 44 hereof, unless the Employee does not agree to renew the contract even though the conditions offered by the Employer are the same as or better than those stipulated in the current contract;

(6) The employment contract ends pursuant to item (4) or (5) of Article 44 hereof;

(7) Other circumstances specified in laws or administrative statutes.

#### Article 47

A Employee shall be paid severance pay based on the number of years worked with the Employer at the rate of one month's wage for each full year worked. Any period of not less than six months but less than one year shall be counted as one year. The severance pay payable to a Employee for any period of less than six months shall be one-half of his monthly wages.

If the monthly wage of a Employee is greater than three times the average monthly wage of employees in the

Employer's area as published by the People's Government at the level of municipality directly under the central government or municipality divided into districts of the area<sup>1</sup> where the Employer is located, the rate for the severance pay paid to him shall be three times the average monthly wage of employees and shall be for not more than 12 years of work.

For the purposes of this Article, the term "monthly wage" means the Employee's average monthly wage for the 12 months prior to the termination or ending of his employment contract.

#### Article 48

If an Employer terminates or ends an employment contract in violation of this

Law and the Employee demands continued performance of such contract, the Employer shall continue performing the same. If the Employee does not demand continued performance of the employment contract or if continued performance of the employment contract has become impossible, the Employer shall pay damages pursuant to Article 87 hereof.

#### Article 49

The state will take measures to establish a comprehensive system that enables Employees' social insurance accounts to be transferred from one region to another and to be continued in such other region.

#### Article 50

At the time of termination or ending of an employment contract, the Employer shall issue a proof of termination or ending of the employment contract and, within 15 days, carry out the procedures for the transfer of the Employee's file and social insurance account.

The Employee shall carry out the procedures for the handover of his work as agreed by the parties. If relevant provisions of this Law require the Employer to pay severance pay, it shall pay the same upon completion of the procedures for the handover of the work.

The Employer shall keep terminated or ended labour contracts on file for not less than two years, for reference purposes.

## **CHAPTER 5 SPECIAL PROVISIONS**

### SECTION 1 COLLECTIVE CONTRACT

#### Article 51

After bargaining on an equal basis, enterprise employees, as one party, and their Employer may conclude a collective contract on such matters as labor compensation, 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 concluded by the Trade union, on behalf of the enterprise's employees, and the Employer. If the Employer does not yet have a Trade union, it shall

1 Translator's note: The phrase "of the area" does not appear in the Chinese text. It has been added by us in view of the context.

Conclude the collective contract with a representative put forward by the Employees under the guidance of the Trade union at the next higher level.

#### Article 52

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

#### Article 53

Industry-wide or area-wide collective contracts may be concluded between the Trade union on the one hand and representatives on the side 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 concluded, it shall be submitted to the labor administration authority. The collective contract shall become effective upon the lapse of 15 days from the date of receipt thereof by the labor administration authority, unless the said authority raises any objections to the contract.

A collective contract that has been concluded in accordance with the law is binding on the Employer and the Employees. An industry-wide or area-wide collective contract is binding on Employers and Employees in the industry or in the area in the locality concerned.

#### Article 55

The rates for labor compensation, standards for working conditions, etc. stipulated in a collective contract may not be lower than the minimum rates and standards prescribed by the local People's Government. The rates for labor compensation, standards for working conditions, etc. stipulated in the employment contract between an Employer and a Employee may not be lower than those stipulated in the collective contract.

#### Article 56

If an Employer's breach of the collective contract infringes upon the labor rights and interests of the employees, the Trade union may, in accordance with the law, demand that the Employer assume liability. If a dispute arising from the

performance of the collective contract is not resolved following consultations, the Trade union may apply for arbitration and institute an action according to law.

## SECTION 2 Placement

### Article 57

Staffing firms shall be established in accordance with the relevant provisions

of the Company Law and have registered capital of not less than RMB ¥ 500,000.

### Article 58

Staffing firms are Employers as mentioned in this Law and shall perform an Employer's obligations toward its Employees. The employment contract between a staffing firm and a Employee to be placed shall, in addition to the matters specified in Article 17 hereof, specify matters such as the unit with which the Employee will be placed, the term of his placement, his position, etc.

The labour contracts between staffing firms and the Employees to be placed shall be fixed term labour contracts with a term of not less than two years. Staffing firms shall pay labor compensation on a monthly basis. During periods when there is no work for Employees to be placed, the staffing firm shall pay such Employees compensation on a monthly basis at the minimum wage rate prescribed by the People's Government of the place where the staffing firm is located.

### Article 59

When placing Employees, staffing firms shall enter into staffing agreements with the units that accept the Employees under the placement arrangements ("Accepting Units"). The staffing agreements shall stipulate the job positions in which Employees are placed, the number of persons placed, the term of placement, the amounts and methods of payments of labor compensation and social insurance premiums, and the liability for breach of the agreement.

An Accepting Unit shall decide with the staffing firm on the term of placement based on the actual requirements of the job position, and it may not conclude several short-term placement agreements to cover a continuous term of labor use.

### Article 60

Staffing firms shall inform the Employees placed of the content of the placement agreements.

Staffing firms may not pocket part of the labor compensation that the Accepting Units pay to the Employees in accordance with the placement agreement.

Staffing firms and the Accepting Units may not charge fees from the Employees placed.

### Article 61

If a staffing firm places a Employee with an Accepting Unit in another region, the Employee's labor compensation and working conditions shall be in line with the rates and standards of the place where the Accepting Unit is located.

#### Article 62

Accepting Units shall perform the following obligations:

- (1) Implement state labor standards and provide the corresponding working conditions and labor protection;
- (2) communicate the job requirements and labor compensation of the Employees placed;
- (3) Pay overtime pay and performance bonuses and provide benefits appropriate for the job positions;
- (4) Provide the placed Employees who are on the job with the training necessary for their job positions; and
- (5) In case of continuous placement, implement a normal wage adjustment system.

Accepting Units may not in turn place the Employees with other Employers.

#### Article 63

Placed Employees shall have the right to receive the same pay as that received by Employees of the Accepting Unit for the same work. If an Accepting Unit has no Employee in the same position, the labor compensation shall be determined with reference to the labor compensation paid in the place where the Accepting Unit is located to Employees in the same or a similar position.

#### Article 64

Placed Employees have the right to lawfully join the Trade union of their staffing firm or the Accepting Unit or to organize such unions, so as to protect their own lawful rights and interests.

#### Article 65

Placed Employees may terminate their labour contracts with their staffing firms pursuant to Article 36 or 38 hereof.

If any of the circumstances provided for in Article 39 and items (1) and (2) of Article 40 hereof applies to a placed Employee, his Accepting Unit may return him to the staffing firm, which may terminate its employment contract with him in accordance with the relevant provisions of this Law.

#### Article 66

The placement of Employees shall generally be practiced for temporary, auxiliary or substitute job positions.

#### Article 67

Employers may not establish staffing firms to place Employees with themselves or their subordinate units.

### Section 3 Part-Time Labor

#### Article 68

The term "part-time labor" means a form of labor for which the compensation is chiefly calculated by the hour and where the Employee generally averages not more than 4 hours of work per day and not more than an aggregate 24 hours of work per week for the same Employer.

#### Article 69

The two parties to part-time labor may conclude an oral agreement.

A Employee who engages in part-time labor may conclude an employment contract with one or more Employers, but a subsequently concluded employment contract may not prejudice the performance of a previously concluded employment contract.

#### Article 70

The two parties to part-time labor may not stipulate a probation period.

#### Article 71

Either of the two parties to part-time labor may terminate the use of the labor by notice to the other party at any time. No severance pay shall be payable by the Employer to the Employee upon termination of the use of the labor.

#### Article 72

The hourly compensation rate for part-time labor may not be lower than the minimum hourly wage rate prescribed by the People's Government of the place where the Employer is located.

The labor compensation settlement and payment cycle for part-time labor may not exceed 15 days.

## **CHAPTER 6 MONITORING INSPECTIONS**

#### Article 73

The State Council's labor administration authority shall be responsible for overseeing the implementation of the employment contract system nationwide. The labor administration authorities of local People's Governments at the county level and above shall be responsible for overseeing the implementation of the employment contract system in their respective jurisdictions.

In the course of overseeing the implementation of the employment contract system, the labor administration authorities

of People's Governments at the county level and above shall consider the opinions of the Trade unions, the representatives on the side of the enterprises 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 monitoring inspections of the implementation of the following aspects of the employment contract system, in accordance with the law:

- (1) Employers' formulation of rules and regulations that have a direct bearing on the immediate interests of Employees, and the implementation thereof;
- (2) The conclusion and termination of labour contracts by Employers and Employees;
- (3) Compliance with relevant regulations on placement by staffing firms and Accepting Units;
- (4) Employers' compliance with state regulations on Employees' working hours, rest and leave;
- (5) Employers' payment of labor compensation as specified in the labour contracts and compliance with minimum wage rates;
- (6) Employers' enrollment in the various types of social insurance and payment of social insurance premiums; and
- (7) Other labor matters requiring monitoring inspections, as specified in laws and administrative statutes.

#### Article 75

When the labor administration authority of a local People's Government at the county level or above conducts a monitoring inspection, it has the authority to review materials relating to the labour contracts and collective contracts and conduct an on-the-spot inspection of the work premises. Both the Employer and the Employees shall truthfully provide relevant information and materials.

When working personnel of a labor administration authority conduct a monitoring inspection, they shall show their IDs, exercise their functions and powers according to law and enforce the law in a well-disciplined manner.

#### Article 76

Such competent 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 employment contract system by Employers.

#### Article 77

A Employee whose lawful rights and interests have been infringed upon shall have the right to request that the relevant

authority deal with the infringement according to law, or to apply for arbitration and institute an action according to law.

#### Article 78

Trade unions shall safeguard the lawful rights and interests of Employees in accordance with the law and monitor the performance of the labour contracts and collective contracts by Employers. If an Employer violates labor laws or statutes or breaches an employment contract or collective contract, the Trade union has the right to voice its opinion or require that the matter be rectified. If a Employee applies for arbitration or institutes an action, the Trade 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 timely check and handle the violations reported and reward those persons whose reports are valuable.

### **CHAPTER 7 LEGAL LIABILITY**

#### Article 80

If an Employer's rule or regulation with a direct bearing on the immediate interests of Employees violates laws or administrative statutes, the labor administration authority shall order rectification and give a warning. If the said rule or regulation caused a Employee to suffer harm, the Employer will be liable for damages.

#### Article 81

If the text of an employment contract provided by an Employer lacks any of the mandatory clauses which this Law requires to be included in such contracts or if an Employer fails to deliver the text of the employment contract to the Employee, the labor administration authority shall order rectification; if the Employee suffered harm as a result thereof, the Employer will be liable for damages.

#### Article 82

If an Employer concludes a written employment contract with a Employee more than one month but less than one year after the date on which it started using him, it shall each month pay to the Employee twice his wage.

If an Employer fails, in violation of this Law, to conclude an open-ended employment contract with a Employee, it shall each month pay to the Employee twice his wage, starting from the date on which an open-ended employment contract should have been concluded.

#### Article 83

If the probation period stipulated by an Employer with a Employee violates this Law, the labor administration authority

shall order rectification. If the illegally stipulated probation has been performed, the Employer shall pay compensation to the Employee according to the time worked on probation beyond the statutory probation period, at the rate of the Employee's monthly wage following the completion of his probation.

#### Article 84

If an Employer violates this Law by retaining a Employee's resident ID card or other papers, the labor administration authority shall order the same returned to the Employee within a specified period of time and impose a penalty in accordance with the provisions of relevant laws.

If an Employer violates this Law by collection property from Employees as security or under some other guise, the labor administration authority shall order the same returned to the Employees within a specified period of time and impose a fine on the Employer of not less than RMB ¥500 and not more than RMB ¥2,000 for each person; If the Employees suffered harm as a result of the said conduct on the part of the Employer, the Employer will be liable for damages. If an Employer retains a Employee's file or other Article after the Employee has terminated or ended his employment contract in accordance with the law, a penalty shall be imposed in accordance with the preceding paragraph.

#### Article 85

If an Employer:

(1) Fails to pay a Employee his labor compensation in full and on time as stipulated in his employment contract or prescribed by the state;

(2) Pays labor compensation below the local minimum wage rate;

(3) Arranges overtime without paying overtime pay; or

(4) Terminates or ends an employment contract without paying the Employee severance pay pursuant to this Law; then the labor administration authority shall order it to pay the labor compensation, overtime pay or severance pay within a specified period of time; if the labor compensation is lower than the local minimum wage rate, the Employer shall pay the shortfall. If payment is not made within the time limit, the Employer shall be ordered to additionally pay damages to the Employee at a rate of not less than 50 percent and not more than 100 percent of the amount payable.

#### Article 86

If an employment contract is confirmed as being invalid in accordance with Article 26 hereof and the other party suffers harm as a result thereof, the party at fault shall be liable for damages.

#### Article 87

If an Employer terminates or ends an employment contract in violation of this Law, it shall pay damages to the Employee at twice the rate of the severance pay provided for in Article 47 hereof.

#### Article 88

If an Employer:

- (1) uses violence, threats or unlawful restriction of personal freedom to compel a Employee to work;
- (2) Instructs in violation of rules and regulations, or peremptorily orders, a Employee to perform dangerous operations which threaten his personal safety;
- (3) Insults, corporally punishes, beats, illegally searches or detains a Employee; or
- (4) provides odious working conditions or a severely polluted environment, resulting in serious harm to the physical or mental health of Employees; it shall be subjected to administrative punishment; if the said conduct constitutes a criminal offense, criminal liability shall be pursued according to law; if the Employee suffers harm as a result of the said conduct on the part of the Employer, the Employer will be liable for damages.

#### Article 89

If an Employer fails, in violation of this Law, to issue to a Employee a certificate evidencing the termination or ending of his employment contract, the labor administration authority shall order rectification. If the Employee suffers harm as a result of such failure, the Employer will be liable for damages.

#### Article 90

If a Employee terminates his employment contract in violation of this Law or breaches the confidentiality obligations or competition restrictions stipulated in his employment contract, and if such violation or breach causes his Employer to suffer loss, he will be liable for damages.

#### Article 91

If an Employer hires a Employee whose employment contract with another Employer has not yet been terminated or ended, causing the other Employer to suffer a loss, it shall be jointly and severally liable with the Employee for damages.

#### Article 92

If a staffing firm violates this Law, the labor administration authority and other relevant competent authorities shall order it to rectify the situation. If the circumstances are serious, it shall impose a fine of not less than RMB ¥1,000 and not more than RMB ¥5,000 for each person, and the administration for industry and commerce shall revoke the business license. If the Employee(s) placed suffer(s) harm, the staffing firm and the Accepting Unit shall be jointly and severally liable for damages.

#### Article 93

An Employer that carries on business without the legal qualifications therefore will be pursued according to law for its legal liability for its illegal and criminal acts. If its Employees have already performed labor, the Employer or its investor(s) shall pay them labor compensation, severance pays and damages in accordance with the relevant provisions of this Law. If the Employees suffer harm as a result thereof, the said unit shall be liable for damages.

#### Article 94

If an individual that contracts for the operation of a business hires Employees in violation of this Law and a Employee suffers harm as a result thereof, the organization that employed such contractor shall be jointly and severally liable with the contractor for damages.

#### Article 95

If a labor administration authority, another competent authority or a member of its working personnel neglects its/his duties, fails to perform its/his statutory duties or exercises its/his authority in violation of the law, thereby causing harm to a Employee or an

Employer, liability for damages shall be borne and 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 laws or administrative statutes contain, or the State Council has formulated, separate regulations concerning the conclusion, performance, amendment, termination or ending of labour contracts by and between institutions and those of their working personnel that are subject to the employment system, matters shall be handled in accordance with such regulations; in the absence of such regulations, matters shall be handled in accordance with this Law.

#### Article 97

Labour contracts concluded in accordance with the law before the implementation of this Law and continuing to exist on the implementation date of this Law shall continue to be performed. For the purposes of item (3) of the second paragraph of Article 14 hereof, the number of consecutive occasions on which a fixed-term employment contract is concluded shall be counted from the first renewal of such contract to occur after the implementation of this Law.

If an employment relationship was established prior to the implementation of this Law without the conclusion of a written employment contract, such contract shall be concluded within one month from the implementation date of this Law.

If an employment contract existing on the implementation date of this Law is terminated or ends after the implementation of this Law and, pursuant to Article 46 hereof, severance pay is payable, the number of years for which severance pay is payable shall be counted from the implementation date of this Law. If, under relevant regulations in

effect prior to the implementation of this Law, the Employee is entitled to severance pay from the Employer in respect of a period preceding the implementation of this Law, the matter shall be handled in accordance with the relevant regulations that were in effect at that time.

Article 98

This Law shall be implemented from January 1, 2008.

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