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# 中华人民共和国劳动合同法（2012修正）

# Labor Contract Law of the People's Republic of China (Amended in 2012)

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（2007年6月29日第十届全国人民代表大会常务委员会第二十八次会议通过 根据2012年12月28日第十一届全国人民代表大会常务委员会第三十次会议《关于修改〈中华人民共和国劳动合同法〉的决定》修正）

(Adopted at the 28th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on June 29, 2007, and amended in accordance with the Decision on Amending the Labor Contract Law of the People's Republic of China adopted at the 30th session of the Standing Committee of the 11th National People's Congress of the People's Republic of China on December 28, 2012)

第一章 总则

Chapter 1 General Provisions

第一条   为了完善劳动合同制度，明确劳动合同双方当事人的权利和义务，保护劳动者的合法权益，构建和发展和谐稳定的劳动关系，制定本法。

Article 1 This Law is formulated for the purposes of improving upon the labour contract system, specifying the rights and obligations of both parties to a labour contract, protecting the legitimate rights and interests of workers, and establishing and developing harmonious and stable labour relationships.

第二条   中华人民共和国境内的企业、个体经济组织、民办非企业单位等组织（以下称用人单位）与劳动者建立劳动关系，订立、履行、变更、解除或者终止劳动合同，适用本法。

Article 2 This Law shall apply to establishment of employment relationship between enterprises, individual economic organisations, private non-enterprise organisations etc in the People's Republic of China (hereinafter referred to as the "employers") and their workers, conclusion, performance, alteration, rescission or termination of labour contracts.

国家机关、事业单位、社会团体和与其建立劳动关系的劳动者，订立、履行、变更、解除或者终止劳动合同，依照本法执行。

The conclusion, performance, modification, rescission or termination of labor contracts between state organs, institutions or social organizations and workers with whom they establish employment relationships, shall be subject to this Law.

第三条   订立劳动合同，应当遵循合法、公平、平等自愿、协商一致、诚实信用的原则。

Article 3 Conclusion of labour contracts shall comply with the principles of legitimacy, fairness, equality and voluntary participation, negotiation and consensus, honesty and trustworthiness.

依法订立的劳动合同具有约束力，用人单位与劳动者应当履行劳动合同约定的义务。

Labour contracts concluded pursuant to the law shall be binding, employers and workers shall perform the obligations stipulated in the labour contracts.

第四条   用人单位应当依法建立和完善劳动规章制度，保障劳动者享有劳动权利、履行劳动义务。

Article 4 Employers shall establish and improve upon labour rules and systems pursuant to the law, ensure that workers enjoy labour rights and perform labour obligations.

用人单位在制定、修改或者决定有关劳动报酬、工作时间、休息休假、劳动安全卫生、保险福利、职工培训、劳动纪律以及劳动定额管理等直接涉及劳动者切身利益的规章制度或者重大事项时，应当经职工代表大会或者全体职工讨论，提出方案和意见，与工会或者职工代表平等协商确定。

When an employer formulates, revises or decides on rules or major matters relating to labour remuneration, working hours, rest and off days, labour safety and health, insurance and welfare, staff training, labour discipline and labour quota management etc which directly involves the vital interests of workers, such matters shall be discussed by the employee representatives congress or all the employees, and the employer shall propose the scheme and opinions and negotiate and determine with the labour union or employee representatives on an equal basis.

在规章制度和重大事项决定实施过程中，工会或者职工认为不适当的，有权向用人单位提出，通过协商予以修改完善。

During the decision and implementation of rules and major matters, the labour union or employees shall have the right to raise issues with the employer if they deem that they are inappropriate, and may propose amendments and improvements through negotiation.

用人单位应当将直接涉及劳动者切身利益的规章制度和重大事项决定公示，或者告知劳动者。

Employers shall announce decisions on rules and major matters which directly involve the vital interests of workers or notify the workers.

第五条   县级以上人民政府劳动行政部门会同工会和企业方面代表，建立健全协调劳动关系三方机制，共同研究解决有关劳动关系的重大问题。

Article 5 The labour administrative authorities of People's Governments of county level and above shall, jointly with the labour unions and enterprise representatives, establish and improve upon the tripartite labour relationship coordination mechanism, and jointly study and resolve significant issues relating to labour relationship.

第六条   工会应当帮助、指导劳动者与用人单位依法订立和履行劳动合同，并与用人单位建立集体协商机制，维护劳动者的合法权益。

Article 6 Labour unions shall assist and guide conclusion and performance of labour contracts between workers and employers pursuant to the law, and shall establish a collective negotiation mechanism with employers to protect the legitimate rights and interests of workers.

第二章 劳动合同的订立

Chapter 2 Conclusion of Labor Contracts

第七条   用人单位自用工之日起即与劳动者建立劳动关系。用人单位应当建立职工名册备查。

Article 7 An employer is deemed to have established a labour relationship with a worker with effect from the date of employment. An employer shall establish a register of employees for inspection purpose.

第八条   用人单位招用劳动者时，应当如实告知劳动者工作内容、工作条件、工作地点、职业危害、安全生产状况、劳动报酬，以及劳动者要求了解的其他情况；用人单位有权了解劳动者与劳动合同直接相关的基本情况，劳动者应当如实说明。

Article 8 The Employer shall truthfully advise the employee of the scope of work, the working conditions, the place of work, occupational hazards, production safety conditions, labor compensation and other matters requested by the employee; the Employer shall be entitled to the employee basic information of the employee that directly relates to the labor contract, and the employee shall truthfully provide the same.

第九条   用人单位招用劳动者，不得扣押劳动者的居民身份证和其他证件，不得要求劳动者提供担保或者以其他名义向劳动者收取财物。

Article 9 An employer recruiting workers shall not retain the identity card or other certificate of a worker, and shall not require a worker to provide guarantee or collect monies from a worker under any pretext.

第十条   建立劳动关系，应当订立书面劳动合同。

Article 10 To establish a labor relationship shall conclude a labor contract in written form.

已建立劳动关系，未同时订立书面劳动合同的，应当自用工之日起一个月内订立书面劳动合同。

Where a written labour contract is not concluded simultaneously with the establishment of a labour relationship, a written labour contract shall be concluded within one month from the date of employment.

用人单位与劳动者在用工前订立劳动合同的，劳动关系自用工之日起建立。

Where an Employer and an employee conclude a labor contract before the employee commences work, the labor relationship shall be established on the date the employee commences work.

第十一条   用人单位未在用工的同时订立书面劳动合同，与劳动者约定的劳动报酬不明确的，新招用的劳动者的劳动报酬按照集体合同规定的标准执行；没有集体合同或者集体合同未规定的，实行同工同酬。

Article 11 Where an Employer fails to conclude a written labor contract with an employee before the employee commences work, and the labor compensation agreed upon with the employee is unclear, the labor compensation for the newly recruited employee shall be paid in accordance with the standards stipulated in the collective contract; where there is no collective contract or the collective contract is silent on the matter, the principle of equal pay for equal work shall apply.

第十二条   劳动合同分为固定期限劳动合同、无固定期限劳动合同和以完成一定工作任务为期限的劳动合同。

Article 12 Labor contracts are divided into fixed-term labor contracts, open-ended labor contracts and labor contracts that terminate upon the completion of a certain task.

第十三条   固定期限劳动合同，是指用人单位与劳动者约定合同终止时间的劳动合同。

Article 13 A "fixed-term labor contract" refers to a labor contract where the termination date has been agreed upon by the Employer and the employee.

用人单位与劳动者协商一致，可以订立固定期限劳动合同。

Upon negotiation and consensus between an employer and a worker, a fixed-term labour contract may be concluded.

第十四条   无固定期限劳动合同，是指用人单位与劳动者约定无确定终止时间的劳动合同。

Article 14 An "open-ended labor contract" refers to a labor contract where the Employer and the employee have agreed not to stipulate a definite termination date.

用人单位与劳动者协商一致，可以订立无固定期限劳动合同。有下列情形之一，劳动者提出或者同意续订、订立劳动合同的，除劳动者提出订立固定期限劳动合同外，应当订立无固定期限劳动合同：

Upon negotiation and consensus between an employer and a worker, a non-fixed-term labour contract may be concluded. If an employee proposes or agrees to renew and conclude a labor contract in any of the following circumstances, an open-ended labor contract shall be concluded, unless the employee proposes to conclude a fixed-term labor contract:

（一）劳动者在该用人单位连续工作满十年的；

1. The employee has worked for the employer for ten consecutive years;

（二）用人单位初次实行劳动合同制度或者国有企业改制重新订立劳动合同时，劳动者在该用人单位连续工作满十年且距法定退休年龄不足十年的；

(II) The employee has worked for the employer for ten consecutive years or more and will reach his legal retirement age in less than ten years when the employer first implemented the labor contract system or the state-owned enterprise restructured and re-concluded the labor contract;

（三）连续订立二次固定期限劳动合同，且劳动者没有本法第三十九条和第四十条第一项、第二项规定的情形，续订劳动合同的。

(III) Where a labor contract is concluded as a fixed-term labor contract on two consecutive occasions and the employee, in the absence of any of the circumstances stipulated in Article 39 and Items 1 and 2 of Article 40 hereof, renews such contract.

用人单位自用工之日起满一年不与劳动者订立书面劳动合同的，视为用人单位与劳动者已订立无固定期限劳动合同。

If an Employer fails to conclude a written labor contract with an employee after one year has lapsed since the date the employee commenced work, the Employer and the employee shall be deemed to have concluded a non-fixed-term labor contract.

第十五条   以完成一定工作任务为期限的劳动合同，是指用人单位与劳动者约定以某项工作的完成为合同期限的劳动合同。

Article 15 A "labor contract that terminates upon the completion of a certain task" refers to a labor contract where the Employer and the employee have agreed that the contractual term is based on the completion of a certain task.

用人单位与劳动者协商一致，可以订立以完成一定工作任务为期限的劳动合同。

Upon negotiation and consensus between an employer and a worker, a labour contract which expires upon completion of agreed assignments may be concluded.

第十六条   劳动合同由用人单位与劳动者协商一致，并经用人单位与劳动者在劳动合同文本上签字或者盖章生效。

Article 16 A labor contract shall become effective after the Employer and the employee have both signed or sealed such contract upon reaching a negotiated consensus.

劳动合同文本由用人单位和劳动者各执一份。

The employer and the worker shall each hold a copy of the labour contract.

第十七条   劳动合同应当具备以下条款：

Article 17 A labor contract shall include the following clauses:

(一)用人单位的名称、住所和法定代表人或者主要负责人；

1. The employer's name, domicile and legal representative or major principal;

(二)劳动者的姓名、住址和居民身份证或者其他有效身份证件号码；

(II) The laborer's name, address and number of identity card or other valid identity certificate;

(三)劳动合同期限；

(III) Term of the labor contract;

(四)工作内容和工作地点；

(IV) Job description and workplace;

(五)工作时间和休息休假；

(V) Working hours, rest and vacations;

(六)劳动报酬；

(VI) Labor remuneration;

（七）社会保险；

(VII) social insurance;

（八）劳动保护、劳动条件和职业危害防护；

(VIII) Labor protection, working conditions and prevention of occupational hazards;

(九)法律、法规规定应当纳入劳动合同的其他事项。

(IX) Other matters that shall be included in the labor contract according to laws and regulations.

劳动合同除前款规定的必备条款外，用人单位与劳动者可以约定试用期、培训、保守秘密、补充保险和福利待遇等其他事项。

In addition to the essential clauses of a labour contract stipulated in the preceding paragraph, an employer and a worker may agree on probationary period, training, confidentiality, supplementary insurance and welfare and benefits and other matters.

第十八条   劳动合同对劳动报酬和劳动条件等标准约定不明确，引发争议的，用人单位与劳动者可以重新协商；协商不成的，适用集体合同规定；没有集体合同或者集体合同未规定劳动报酬的，实行同工同酬；没有集体合同或者集体合同未规定劳动条件等标准的，适用国家有关规定。

Article 18 Where there is no clear agreement in a labour contract on labour remuneration and working conditions etc and a dispute arises therefrom, the employer and the worker may renegotiate; where the negotiation is unsuccessful, the provisions of the collective contract shall apply; where there is no collective contract or where the collective contract has no provision on labour remuneration, the same remuneration shall be paid for the same job position; where there is no collective contract or the collective contract has no provision on working conditions etc, the relevant provisions of the State shall apply.

第十九条   劳动合同期限三个月以上不满一年的，试用期不得超过一个月；劳动合同期限一年以上不满三年的，试用期不得超过二个月；三年以上固定期限和无固定期限的劳动合同，试用期不得超过六个月。

Article 19 Where the term of a labour contract is more than three months but less than one year, the probationary period shall not exceed one month; where the term of a labour contract is more than one year but less than three years, the probationary period shall not exceed two months; for fixed-term contracts of three years and above and non-fixed-term labour contracts, the probationary period shall not exceed six months.

同一用人单位与同一劳动者只能约定一次试用期。

An Employer may only stipulate one probation period with an employee.

以完成一定工作任务为期限的劳动合同或者劳动合同期限不满三个月的，不得约定试用期。

For labour contracts which expire upon completion of agreed assignments or labour contracts with a term of less than three months, no probationary period shall be agreed upon.

试用期包含在劳动合同期限内。劳动合同仅约定试用期的，试用期不成立，该期限为劳动合同期限。

The probation period shall be included in the term of the labor contract. Where a labour contract merely stipulates a probationary period, the probationary period shall be invalid and shall be the term of the labour contract.

第二十条   劳动者在试用期的工资不得低于本单位相同岗位最低档工资或者劳动合同约定工资的百分之八十，并不得低于用人单位所在地的最低工资标准。

Article 20 The wage amount of a worker during his/her probationary period shall not be less than the lowest wage amount for the same job position in the employer's organisation or 80% of the wage amount agreed in the labour contract, and shall not be less than the minimum wage standard of the locality of the employer.

第二十一条   在试用期中，除劳动者有本法第三十九条和第四十条第一项、第二项规定的情形外，用人单位不得解除劳动合同。用人单位在试用期解除劳动合同的，应当向劳动者说明理由。

Article 21 An Employer shall not cancel a labor contract during the probation period unless the employee falls into any of the circumstances stipulated in Article 39 and Items 1 and 2 of Article 40 hereof. If an Employer cancels a labor contract during the probation period, it shall explain the reasons to the employee.

第二十二条   用人单位为劳动者提供专项培训费用，对其进行专业技术培训的，可以与该劳动者订立协议，约定服务期。

Article 22 If an Employer is paying for a worker's special training expenses and providing him with professional technical training, it may conclude an agreement specifying a term of service with such employee.

劳动者违反服务期约定的，应当按照约定向用人单位支付违约金。违约金的数额不得超过用人单位提供的培训费用。用人单位要求劳动者支付的违约金不得超过服务期尚未履行部分所应分摊的培训费用。

Where a worker violates the agreement on the service period, he/she shall pay default penalty to the employer pursuant to the agreement. The amount of penalty for breach of contract shall not exceed the training expenses as provided by the employer. The amount of default penalty required by the employer shall not exceed the amount of training expenses to be apportioned over the unperformed portion of the service period.

用人单位与劳动者约定服务期的，不影响按照正常的工资调整机制提高劳动者在服务期期间的劳动报酬。

The agreement between an employer and a worker on a period of service shall not affect the raising of labour remuneration during the period of service pursuant to normal wage adjustment mechanism.

第二十三条   用人单位与劳动者可以在劳动合同中约定保守用人单位的商业秘密和与知识产权相关的保密事项。

Article 23 An employer and a worker may agree on keeping confidentiality of the employer's commercial secrets and confidential matters in relation to intellectual property in a labour contract.

对负有保密义务的劳动者，用人单位可以在劳动合同或者保密协议中与劳动者约定竞业限制条款，并约定在解除或者终止劳动合同后，在竞业限制期限内按月给予劳动者经济补偿。劳动者违反竞业限制约定的，应当按照约定向用人单位支付违约金。

Where a worker is obliged to keep confidentiality, the employer may agree with the worker in the labour contract or confidentiality agreement on a non-competition restrictive covenant and agree that upon rescission or termination of the labour contract, the employer shall make economic compensation to the worker on a monthly basis during the non-competition restrictive covenant period. Where the worker has violated the non-competition agreement, he/she shall pay default penalty to the employer pursuant to the agreement.

第二十四条   竞业限制的人员限于用人单位的高级管理人员、高级技术人员和其他负有保密义务的人员。竞业限制的范围、地域、期限由用人单位与劳动者约定，竞业限制的约定不得违反法律、法规的规定。

Article 24 The personnel subject to non-competition obligations shall be limited to the Employer's senior management, senior technicians and other individuals with confidentiality obligations. The scope, geographical region and duration of non-competition restrictive covenant shall be agreed between the employer and the worker; non-competition restrictive covenant shall not violate the provisions of laws and regulations.

在解除或者终止劳动合同后，前款规定的人员到与本单位生产或者经营同类产品、从事同类业务的有竞争关系的其他用人单位，或者自己开业生产或者经营同类产品、从事同类业务的竞业限制期限，不得超过二年。

Upon rescission or termination of a labour contract, the non-competition restrictive covenant period in which the aforesaid stipulated personnel shall not be employed by another employer which engages in production or business in the same type of products or provision of the same type of services as the employer and shall not engage in production or business in the same type of products or provision of the same type of services as the employer shall not exceed two years.

第二十五条   除本法第二十二条和第二十三条规定的情形外，用人单位不得与劳动者约定由劳动者承担违约金。

Article 25 Except for circumstances stipulated in Article 22 and Article 23, an employer shall not agree with a worker on bearing of default penalty by the worker.

第二十六条   下列劳动合同无效或者部分无效：

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

(一)以欺诈、胁迫的手段或者乘人之危，使对方在违背真实意思的情况下订立或者变更劳动合同的；

1. The employee, by means of deception or coercion or by taking advantage of the employer's difficulties, forces the employer to conclude or alter a labour contract against the employer's genuine intention;

(二)用人单位免除自己的法定责任、排除劳动者权利的；

(II) the Employer exempts itself from legal liability or excludes the rights of the laborer;

(三)违反法律、行政法规强制性规定的。

(III) Where the mediation agreement violates the mandatory provisions of laws and administrative regulations.

对劳动合同的无效或者部分无效有争议的，由劳动争议仲裁机构或者人民法院确认。

Where there is a dispute over the invalidity or partial invalidity of a labour contract, a labour dispute arbitration agency or a People's Court shall confirm.

第二十七条   劳动合同部分无效，不影响其他部分效力的，其他部分仍然有效。

Article 27 The partial invalidity of a labor contract shall not affect the validity of other parts of the contract, which shall remain valid.

第二十八条   劳动合同被确认无效，劳动者已付出劳动的，用人单位应当向劳动者支付劳动报酬。劳动报酬的数额，参照本单位相同或者相近岗位劳动者的劳动报酬确定。

Article 28 Where a labour contract is deemed to be invalid and the worker has provided labour services, the employer shall pay labour remuneration to the worker. The amount of labour remuneration shall be determined with reference to the labour remuneration of a worker holding the same or similar position in the employer's organisation.

第三章 劳动合同的履行和变更

Chapter 3 Performance and Alteration of Labor Contracts

第二十九条   用人单位与劳动者应当按照劳动合同的约定，全面履行各自的义务。

Article 29 Employers and workers shall fully perform their respective obligations pursuant to the agreement in the labour contract.

第三十条   用人单位应当按照劳动合同约定和国家规定，向劳动者及时足额支付劳动报酬。

Article 30 Employers shall pay their workers labour remuneration promptly and fully pursuant to the agreement in the labour contract and the provisions of the State.

用人单位拖欠或者未足额支付劳动报酬的，劳动者可以依法向当地人民法院申请支付令，人民法院应当依法发出支付令。

Where an employer defaults on payment or fails to pay labour remuneration in full amount, a worker may apply to a People's Court for an order for payment and the People's Court shall issue an order for payment pursuant to the law.

第三十一条   用人单位应当严格执行劳动定额标准，不得强迫或者变相强迫劳动者加班。用人单位安排加班的，应当按照国家有关规定向劳动者支付加班费。

Article 31 Employers shall strictly implement the standard for labour quota, and shall not force a worker to work overtime directly or under any pretext. The employer that arranges for a worker to work overtime shall pay overtime wages to the worker pursuant to the relevant provisions of the State.

第三十二条   劳动者拒绝用人单位管理人员违章指挥、强令冒险作业的，不视为违反劳动合同。

Article 32 The refusal of an employee to perform dangerous tasks shall not be deemed as a breach of contract if he is forced to do so by the management staff of the Employer or if the instruction to do so is made in violation of regulations.

劳动者对危害生命安全和身体健康的劳动条件，有权对用人单位提出批评、检举和控告。

Laborers shall have the right to criticize, report to the authorities or bring charges against their Employers in respect of working conditions that would endanger their lives and health.

第三十三条   用人单位变更名称、法定代表人、主要负责人或者投资人等事项，不影响劳动合同的履行。

Article 33 A change in the Employer's name, legal representative, main person-in-charge or investor, or in relation to other matters shall not affect the performance of the labor contract.

第三十四条   用人单位发生合并或者分立等情况，原劳动合同继续有效，劳动合同由承继其权利和义务的用人单位继续履行。

Article 34 In the event of a merger or division, etc., the original labor contracts shall continue to be valid and performed by the Employer (s) which succeeded to the rights and obligations of the original Employer.

第三十五条   用人单位与劳动者协商一致，可以变更劳动合同约定的内容。变更劳动合同，应当采用书面形式。

Article 35 An Employer and an employee may amend the provisions of the labor contract if they so agree upon consultation. Alteration of labour contracts shall be made in writing.

变更后的劳动合同文本由用人单位和劳动者各执一份。

The employer and the worker shall each hold a copy of the amended labour contract.

第四章 劳动合同的解除和终止

Chapter 4 Rescission and Termination of the Labor Contract

第三十六条   用人单位与劳动者协商一致，可以解除劳动合同。

Article 36 An Employer and an employee may cancel their labor contracts if they so agree after consultation.

第三十七条   劳动者提前三十日以书面形式通知用人单位，可以解除劳动合同。劳动者在试用期内提前三日通知用人单位，可以解除劳动合同。

Article 37 An employee may terminate the labor contract upon giving his Employer 30 days' prior written notice. A worker may notify the employer three days in advance during his/her probationary period to rescind his/her labour contract.

第三十八条   用人单位有下列情形之一的，劳动者可以解除劳动合同：

Article 38 An employee may terminate his labor contract if his Employer:

(一)未按照劳动合同约定提供劳动保护或者劳动条件的；

1. Failing to provide labor protection or working conditions as stipulated in the labor contract;

(二)未及时足额支付劳动报酬的；

(II) failure to pay labor remunerations in full and on time; or

(三)未依法为劳动者缴纳社会保险费的；

(III) failing to pay social insurance premiums for the workers in accordance with the law;

(四)用人单位的规章制度违反法律、法规的规定，损害劳动者权益的；

(IV) The bylaws thereof are inconsistent with any law or regulation and impair the rights and interests of the employee;

(五)因本法第二十六条第一款规定的情形致使劳动合同无效的；

(V) causes the labor contract to be invalid due to any of the circumstances stipulated in Paragraph 1 of Article 26 hereof; or

(六)法律、行政法规规定劳动者可以解除劳动合同的其他情形。

(VI) Other circumstances under which the employee may dissolve the labor contract as prescribed by laws or administrative regulations.

用人单位以暴力、威胁或者非法限制人身自由的手段强迫劳动者劳动的，或者用人单位违章指挥、强令冒险作业危及劳动者人身安全的，劳动者可以立即解除劳动合同，不需事先告知用人单位。

Where an employer uses means such as violence, threat or illegal restriction of personal freedom to coerce a worker into provision of labour or the employer gives orders which violate the rules or force a worker to engage in risky work which endangers the worker's personal safety, the worker may forthwith rescind the labour contract and shall not be required to notify the employer in advance.

第三十九条   劳动者有下列情形之一的，用人单位可以解除劳动合同：

Article 39 An Employer may terminate the labor contract if the employee:

(一)在试用期间被证明不符合录用条件的；

1. Having been proved not up to the requirements for recruitment during the probation period;

(二)严重违反用人单位的规章制度的；

(II) The employee seriously violates the rules and regulations of the employer;

(三)严重失职，营私舞弊，给用人单位造成重大损害的；

3. Having caused great losses to the employing unit through gross neglect of duty or malpractice for personal gains;

(四)劳动者同时与其他用人单位建立劳动关系，对完成本单位的工作任务造成严重影响，或者经用人单位提出，拒不改正的；

(IV) The employee simultaneously enters an employment relationship with any other employer and thus seriously affects his completion of the tasks assigned by the employer, or the employee refuses to correct after the employer has pointed out the problem;

（五）因本法第二十六条第一款第一项规定的情形致使劳动合同无效的；

(V) causes the labor contract to be invalid due to any of the circumstances stipulated in Item 1 of the first paragraph of Article 26 hereof; or

(六)被依法追究刑事责任的。

(VI) Having been investigated for criminal responsibility in accordance with the law.

第四十条   有下列情形之一的，用人单位提前三十日以书面形式通知劳动者本人或者额外支付劳动者一个月工资后，可以解除劳动合同：

Article 40 An Employer may terminate the labor contract under any of the following circumstances by giving the employee 30 days' prior written notice or one month's wages in lieu of notice:

(一)劳动者患病或者非因工负伤，在规定的医疗期满后不能从事原工作，也不能从事由用人单位另行安排的工作的；

1. The laborer suffers any disease or non-work-related injury, and cannot engage in his/her original work after the specified medical treatment period expires, and cannot engage in any other work as arranged by the employing entity;

(二)劳动者不能胜任工作，经过培训或者调整工作岗位，仍不能胜任工作的；

(II) The employee is incompetent for his position, and remains so after training or being assigned to another position;

(三)劳动合同订立时所依据的客观情况发生重大变化，致使劳动合同无法履行，经用人单位与劳动者协商，未能就变更劳动合同内容达成协议的。

(III) The objective conditions taken as the basis for the conclusion of the labor contract have changed so greatly that the labor contract cannot be performed, and no agreement on modification of the contents of the labor contract cannot be reached after negotiations between the Employer and the employee.

第四十一条   有下列情形之一，需要裁减人员二十人以上或者裁减不足二十人但占企业职工总数百分之十以上的，用人单位提前三十日向工会或者全体职工说明情况，听取工会或者职工的意见后，裁减人员方案经向劳动行政部门报告，可以裁减人员：

Article 41 If any of the following circumstances makes it necessary to reduce the workforce by 20 persons or more, or less than 20 persons but accounting for 10% or more of the total number of employees of the Employer, the Employer may only do so after it has explained the situation to the labor union or to all of its employees 30 days in advance, has considered the opinions of the labor union or the employees, and has submitted its workforce layoff plan to the labor administrative department:

(一)依照企业破产法规定进行重整的；

1. where the enterprise is restructured in accordance with the provisions of the Enterprise Bankruptcy Law;

(二)生产经营发生严重困难的；

(II) the occurrence of any serious difficulty in production or operation;

（三）企业转产、重大技术革新或者经营方式调整，经变更劳动合同后，仍需裁减人员的；

(III) Where the enterprise still needs to lay off staff after alteration of labor contracts due to switch to other products, major technological innovation or adjustment to mode of operation; or

(四)其他因劳动合同订立时所依据的客观经济情况发生重大变化，致使劳动合同无法履行的。

(IV) other objective economic circumstances on which the labor contract is based change greatly, which makes it impossible to perform the labor contract.

裁减人员时，应当优先留用下列人员：

When reducing its workforce, the Employer shall retain in priority personnel:

(一)与本单位订立较长期限的固定期限劳动合同的；

1. the persons that have entered into longer fixed-term labor contracts with the enterprise;

(二)与本单位订立无固定期限劳动合同的；

2. the persons that have entered into non-fixed term labor contracts with the enterprise;

(三)家庭无其他就业人员，有需要扶养的老人或者未成年人的。

(III) who are the sole bread winner in the family with dependent family members who are elderly or minors.

用人单位依照本条第一款规定裁减人员，在六个月内重新招用人员的，应当通知被裁减的人员，并在同等条件下优先招用被裁减的人员。

If an Employer that has reduced its workforce pursuant to the first paragraph hereof intends to hire new employees again within six months, it shall notify the employees dismissed at the time of the layoff and such employees shall have priority to be re-hired under the same conditions.

第四十二条   劳动者有下列情形之一的，用人单位不得依照本法第四十条、第四十一条的规定解除劳动合同：

Article 42 An Employer shall not cancel a labor contract under Articles 40 and 41 hereof if the employee:

(一)从事接触职业病危害作业的劳动者未进行离岗前职业健康检查，或者疑似职业病病人在诊断或者医学观察期间的；

1. the employee is engaged in operations exposed to occupational disease hazards and has not undergone an occupational health check before leaving his post, or is suspected of having contracted an occupational disease and is being diagnosed or under medical observation;

(二)在本单位患职业病或者因工负伤并被确认丧失或者部分丧失劳动能力的；

(II) Those who have contracted an occupational disease or sustained a work-related injury and been confirmed as having totally or partially lost the ability to work;

(三)患病或者非因工负伤，在规定的医疗期内的；

(III) The laborer is ill or injured off duty and is under medical treatment;

(四)女职工在孕期、产期、哺乳期的；

(IV) Being a female employee during her pregnant, puerperal, or breast-feeding period;

(五)在本单位连续工作满十五年，且距法定退休年龄不足五年的；

(V) has been working for the Employer continuously for not less than 15 years and is less than five years away from the legal retirement age; or

(六)法律、行政法规规定的其他情形。

(VI) Other circumstances prescribed in laws and administrative regulations.

第四十三条   用人单位单方解除劳动合同，应当事先将理由通知工会。用人单位违反法律、行政法规规定或者劳动合同约定的，工会有权要求用人单位纠正。用人单位应当研究工会的意见，并将处理结果书面通知工会。

Article 43 An employer which unilaterally rescinds a labour contract shall notify the labour union of the reason beforehand. Where the employer violates the provisions of laws and administrative regulations or the labour contract, the labour union shall have the right to require the employer to make correction. The employer shall study the opinion of the labour union and notify the labour union of the outcome in writing.

第四十四条   有下列情形之一的，劳动合同终止：

Article 44 A labor contract shall terminate under any of the following circumstances:

(一)劳动合同期满的；

1. The employment contract expires;

(二)劳动者开始依法享受基本养老保险待遇的；

2. The employee has begun to enjoy his/her basic old-age insurance benefits in accordance with the law;

(三)劳动者死亡，或者被人民法院宣告死亡或者宣告失踪的；

(III) The employee dies, or is declared dead or missing by a people's court;

(四)用人单位被依法宣告破产的；

(IV) The employer is declared bankrupt according to law;

(五)用人单位被吊销营业执照、责令关闭、撤销或者用人单位决定提前解散的；

(V) The employer has its business license revoked, is ordered to close down or be deregistered, or decides to dissolve prematurely;

(六)法律、行政法规规定的其他情形。

(VI) Other circumstances prescribed in laws and administrative regulations.

第四十五条   劳动合同期满，有本法第四十二条规定情形之一的，劳动合同应当续延至相应的情形消失时终止。但是，本法第四十二条第二项规定丧失或者部分丧失劳动能力劳动者的劳动合同的终止，按照国家有关工伤保险的规定执行。

Article 45 Labour contracts which fall under any of the circumstances stipulated in Article 42 shall be extended until the relevant circumstances cease to exist. However, the termination of a labour contract of a worker who has lost his/her labour capacity wholly or partially as stipulated in item (2) of Article 42 shall be handled pursuant to the provisions of the State on work injury insurance.

第四十六条   有下列情形之一的，用人单位应当向劳动者支付经济补偿：

Article 46 The Employer shall pay the employee financial compensation in any of the following circumstances:

（一）劳动者依照本法第三十八条规定解除劳动合同的；

1. the labor contract is cancelled by the employee in accordance with Article 38 hereof;

（二）用人单位依照本法第三十六条规定向劳动者提出解除劳动合同并与劳动者协商一致解除劳动合同的；

(II) the Employer proposes to terminate the labor contract pursuant to Article 36 hereof and the labor contract is terminated as a result after the Employer and the employee reach an agreement thereon after consultation;

（三）用人单位依照本法第四十条规定解除劳动合同的；

3. the labor contract is cancelled by the Employer in accordance with Article 40 hereof;

（四）用人单位依照本法第四十一条第一款规定解除劳动合同的；

(IV) the labor contract is cancelled by the Employer in accordance with Paragraph 1 of Article 41 hereof;

（五）除用人单位维持或者提高劳动合同约定条件续订劳动合同，劳动者不同意续订的情形外，依照本法第四十四条第一项规定终止固定期限劳动合同的；

(V) the labor contract with a fixed period is terminated in accordance with Item 1 of Article 44 hereof, unless the employee refuses to renew the labor contract even though the conditions offered by the Employer are the same as or better than those stipulated in the current contract;

（六）依照本法第四十四条第四项、第五项规定终止劳动合同的；

(VI) the labor contract is terminated in accordance with Items 4 and 5 of Article 44 hereof; or

（七）法律、行政法规规定的其他情形。

(VII) other circumstances stipulated by laws and administrative regulations.

第四十七条   经济补偿按劳动者在本单位工作的年限，每满一年支付一个月工资的标准向劳动者支付。六个月以上不满一年的，按一年计算；不满六个月的，向劳动者支付半个月工资的经济补偿。

Article 47 An employee shall be paid economic compensation based on the number of years he has worked for the employer at the rate of one month's wages for each full year worked. Where the period of service is more than six months but less than one year, it shall be deemed as one year; where the period of service is less than six months, the employer shall pay half a month's wage to the worker as economic compensation.

劳动者月工资高于用人单位所在直辖市、设区的市级人民政府公布的本地区上年度职工月平均工资三倍的，向其支付经济补偿的标准按职工月平均工资三倍的数额支付，向其支付经济补偿的年限最高不超过十二年。

Where the monthly wage of a worker is three times higher than the average monthly wage of employees in the preceding year of the locality announced by the Municipal People's Government of the centrally-administered municipality or the municipality divided into districts where the employer is located, the economic damages standard for economic damages to be made to the worker shall be based on three times the average monthly wage of employees and shall not exceed 12 years of service.

本条所称月工资是指劳动者在劳动合同解除或者终止前十二个月的平均工资。

The term "monthly wage" as mentioned in this Article refers to the average wage of a laborer during the 12 months before the cancellation or termination of the labor contract.

第四十八条   用人单位违反本法规定解除或者终止劳动合同，劳动者要求继续履行劳动合同的，用人单位应当继续履行；劳动者不要求继续履行劳动合同或者劳动合同已经不能继续履行的，用人单位应当依照本法第八十七条规定支付赔偿金。

Article 48 If an Employer cancels or terminates a labor 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 labor contract or if continued performance of the labor contract has become impossible, the Employer shall pay the employee compensation in accordance with Article 87 hereof.

第四十九条   国家采取措施，建立健全劳动者社会保险关系跨地区转移接续制度。

Article 49 The State will adopt measures to establish a comprehensive system that enables worker's social insurance accounts to be transferred from one region to another and to be continued in such other region.

第五十条   用人单位应当在解除或者终止劳动合同时出具解除或者终止劳动合同的证明，并在十五日内为劳动者办理档案和社会保险关系转移手续。

Article 50 At the time of cancellation or termination of a labor contract, the Employer shall issue a certificate of cancellation or termination of the labor contract and conduct, within 15 days, the procedures for the transfer of the employee's file and social insurance account.

劳动者应当按照双方约定，办理工作交接。用人单位依照本法有关规定应当向劳动者支付经济补偿的，在办结工作交接时支付。

The worker shall complete job handover pursuant to the agreement between both parties. Where the employer is required to pay economic damages to the worker pursuant to the relevant provisions of this Law, the payment shall be made at the completion of job handover.

用人单位对已经解除或者终止的劳动合同的文本，至少保存二年备查。

An employer shall keep copies of rescinded or terminated labour contracts for at least two years for inspection purpose.

第五章 特别规定

Chapter 5 Special Provisions

第一节 集体合同

Section 1 Collective Contracts

第五十一条   企业职工一方与用人单位通过平等协商，可以就劳动报酬、工作时间、休息休假、劳动安全卫生、保险福利等事项订立集体合同。集体合同草案应当提交职工代表大会或者全体职工讨论通过。

Article 51 Enterprise employees and their employer may conclude a collective contract on matters such as labour remuneration, working hours, rest periods and off days, work safety and health, insurance and welfare etc through negotiation. A draft collective contract shall be submitted to the employee representatives congress or all employees for discussion and adoption.

集体合同由工会代表企业职工一方与用人单位订立；尚未建立工会的用人单位，由上级工会指导劳动者推举的代表与用人单位订立。

A collective contract shall be concluded by the labor union, representing the enterprise employees, and the Employer. If the Employer has yet to establish a labor union, it shall conclude the contract with a representative nominated by the employees under the guidance of the labor union at the next higher level.

第五十二条   企业职工一方与用人单位可以订立劳动安全卫生、女职工权益保护、工资调整机制等专项集体合同。

Article 52 Enterprise employees and their employer may conclude a special collective contract on work safety and health, protection of female employee rights and interests, wage adjustment mechanism etc.

第五十三条   在县级以下区域内，建筑业、采矿业、餐饮服务业等行业可以由工会与企业方面代表订立行业性集体合同，或者订立区域性集体合同。

Article 53 In areas below the county level, industry-based or area -based collective contracts may be concluded between the labor union and a representative of the enterprise in industries such as construction, mining, catering services, etc.

第五十四条   集体合同订立后，应当报送劳动行政部门；劳动行政部门自收到集体合同文本之日起十五日内未提出异议的，集体合同即行生效。

Article 54 After a collective contract is concluded, it shall be submitted to the labor administrative department. The collective contract shall become effective if within 15 days after receipt of the same, the labor administrative department does not raise any objection to the contract.

依法订立的集体合同对用人单位和劳动者具有约束力。行业性、区域性集体合同对当地本行业、本区域的用人单位和劳动者具有约束力。

A collective contract concluded pursuant to the law shall be binding upon the employer and the workers. An industry-based or region-based collective contract shall be binding upon the Employers and the employees in the industry or in the region.

第五十五条   集体合同中劳动报酬和劳动条件等标准不得低于当地人民政府规定的最低标准；用人单位与劳动者订立的劳动合同中劳动报酬和劳动条件等标准不得低于集体合同规定的标准。

Article 55 The standards for labour remuneration, working conditions etc in a collective contract shall not be lower than the minimum standard stipulated by the local People's Government; the standards for labour remuneration, working conditions etc in a labour contract concluded between an employer and a worker shall not be lower than the standard stipulated in the collective contract.

第五十六条   用人单位违反集体合同，侵犯职工劳动权益的，工会可以依法要求用人单位承担责任；因履行集体合同发生争议，经协商解决不成的，工会可以依法申请仲裁、提起诉讼。

Article 56 If an Employer breaches the collective contract and infringes upon the employees' labor rights and interests, the labor 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 after friendly negotiations, the labor union may apply for arbitration and institute legal proceedings in accordance with the law.

第二节 劳务派遣

Section 2 Labor Dispatching

第五十七条   经营劳务派遣业务应当具备下列条件：

Article 57 Engaging in labor dispatch business shall meet the following conditions:

（一）注册资本不得少于人民币二百万元；

1. The registered capital shall not be less than CNY2 million;

（二）有与开展业务相适应的固定的经营场所和设施；

(II) it has a fixed place of business and facilities commensurate with its business;

（三）有符合法律、行政法规规定的劳务派遣管理制度；

(III) having a labor dispatch management system in compliance with the provisions of the laws and administrative regulations;

（四）法律、行政法规规定的其他条件。

(IV) Other conditions prescribed by laws and administrative regulations.

经营劳务派遣业务，应当向劳动行政部门依法申请行政许可；经许可的，依法办理相应的公司登记。未经许可，任何单位和个人不得经营劳务派遣业务。

Engaging in labour secondment business shall apply to the labour administrative authorities for administrative licensing pursuant to the law; upon obtaining administrative licensing, the corresponding company registration formalities shall be completed pursuant to the law. No entity or individual may engage in labor dispatch business without a license.

第五十八条   劳务派遣单位是本法所称用人单位，应当履行用人单位对劳动者的义务。劳务派遣单位与被派遣劳动者订立的劳动合同，除应当载明本法第十七条规定的事项外，还应当载明被派遣劳动者的用工单位以及派遣期限、工作岗位等情况。

Article 58 Staffing companies are Employers as referred to herein and shall perform an Employer's obligations toward its employees. The labor contract between a staffing company and an employee to be placed shall, in addition to the matters stipulated in Article 17 hereof, specify matters such as the entity to which the employee will be placed, the term of his placement, his position, etc.

劳务派遣单位应当与被派遣劳动者订立二年以上的固定期限劳动合同，按月支付劳动报酬；被派遣劳动者在无工作期间，劳务派遣单位应当按照所在地人民政府规定的最低工资标准，向其按月支付报酬。

Labour secondment units shall enter into fixed-term labour contracts of two year and above with seconded workers and pay them labour remuneration on a monthly basis; during the period in which a seconded worker is not assigned any work duties, the labour secondment unit shall pay the worker remuneration on a monthly basis pursuant to the minimum wage standard stipulated by the local People's Government.

第五十九条   劳务派遣单位派遣劳动者应当与接受以劳务派遣形式用工的单位（以下称用工单位）订立劳务派遣协议。劳务派遣协议应当约定派遣岗位和人员数量、派遣期限、劳动报酬和社会保险费的数额与支付方式以及违反协议的责任。

Article 59 When dispatching workers, a labor dispatch service provider shall conclude labor dispatch agreements with the entity that accepts the workers in a labor dispatch manner (hereinafter referred to as the accepting entity). A labour secondment agreement shall stipulate the secondment positions and the number of seconded workers, secondment period, amount and payment method of labour remuneration and social insurance premiums and default liability.

用工单位应当根据工作岗位的实际需要与劳务派遣单位确定派遣期限，不得将连续用工期限分割订立数个短期劳务派遣协议。

A Receiving Entity shall decide with the staffing company on the term of placement based on the actual requirements of the job positions, and it may not conclude several short-term placement agreements to cover a continuous term of labor use.

第六十条   劳务派遣单位应当将劳务派遣协议的内容告知被派遣劳动者。

Article 60 Staffing companies shall advise the employees placed of the content of the placement agreements.

劳务派遣单位不得克扣用工单位按照劳务派遣协议支付给被派遣劳动者的劳动报酬。

No labor dispatch service provider may withhold any remuneration that is paid to the workers by an accepting entity under the dispatch agreement.

劳务派遣单位和用工单位不得向被派遣劳动者收取费用。

Labour secondment units and secondment employers shall not collect monies from seconded workers.

第六十一条   劳务派遣单位跨地区派遣劳动者的，被派遣劳动者享有的劳动报酬和劳动条件，按照用工单位所在地的标准执行。

Article 61 Where a labour secondment unit undertakes a cross-locality secondment of workers, the workers' entitlement to labour remuneration and working conditions shall comply with the standards at the location of the secondment employer.

第六十二条   用工单位应当履行下列义务：

Article 62 A Receiving Entity shall perform the following obligations:

(一)执行国家劳动标准，提供相应的劳动条件和劳动保护；

1. Implementing the national labor standard, and providing corresponding working conditions and labor protection;

(二)告知被派遣劳动者的工作要求和劳动报酬；

2. informing the job requirements and labor remuneration to the dispatched workers;

(三)支付加班费、绩效奖金，提供与工作岗位相关的福利待遇；

(III) Paying overtime pay and performance bonus, and providing welfare benefits relevant to the work post;

(四)对在岗被派遣劳动者进行工作岗位所必需的培训；

(IV) provide the dispatched employees with the training necessary for their job positions;

(五)连续用工的，实行正常的工资调整机制。

(V) A normal wage adjustment mechanism shall be implemented for continuous employment.

用工单位不得将被派遣劳动者再派遣到其他用人单位。

No accepting entity may reassign the dispatched employees to other employers.

第六十三条   被派遣劳动者享有与用工单位的劳动者同工同酬的权利。用工单位应当按照同工同酬原则，对被派遣劳动者与本单位同类岗位的劳动者实行相同的劳动报酬分配办法。用工单位无同类岗位劳动者的，参照用工单位所在地相同或者相近岗位劳动者的劳动报酬确定。

Article 63 Placed workers shall be entitled to receive the same pay as that received by the employees of the Receiving Entity for the same work. Secondment employers shall implement the same labour remuneration distribution method for seconded workers and their employees holding the same job position in the employer's organisation pursuant to the principle of same remuneration for same job. Where the employer does not employ workers for the same job position, the labour remuneration shall be determined with reference to the labour remuneration of workers at the same or a similar job position at the location of the employer.

劳务派遣单位与被派遣劳动者订立的劳动合同和与用工单位订立的劳务派遣协议，载明或者约定的向被派遣劳动者支付的劳动报酬应当符合前款规定。

The labour remuneration paid to the seconded worker as stated or agreed in the labour contract concluded between the labour secondment unit and the seconded worker and the labour secondment agreement concluded between the labour secondment unit and the employer shall comply with the provisions of the preceding paragraph.

第六十四条   被派遣劳动者有权在劳务派遣单位或者用工单位依法参加或者组织工会，维护自身的合法权益。

Article 64 Placed workers shall have the right to join labor unions through staffing companies or Receiving Entities or organize such unions in accordance with the law, so as to protect their lawful rights and interests.

第六十五条   被派遣劳动者可以依照本法第三十六条、第三十八条的规定与劳务派遣单位解除劳动合同。

Article 65 A dispatched worker may discharge the labor contract with the labor dispatch service provider as prescribed in Articles 36 and 38 of this Law.

被派遣劳动者有本法第三十九条和第四十条第一项、第二项规定情形的，用工单位可以将劳动者退回劳务派遣单位，劳务派遣单位依照本法有关规定，可以与劳动者解除劳动合同。

If a placed worker falls into any of the circumstances stipulated in Article 39 and Items 1 and 2 of Article 40 hereof, the Receiving Entity may return the worker to the staffing company, which may cancel its labor contract with him in accordance with the relevant provisions hereof.

第六十六条   劳动合同用工是我国的企业基本用工形式。劳务派遣用工是补充形式，只能在临时性、辅助性或者替代性的工作岗位上实施。

Article 66 Employment by way of labour contract is the basic form of employment by enterprises in our country. Labor dispatch is a supplementary form, which can only be implemented in temporary, auxiliary or substitutive positions.

前款规定的临时性工作岗位是指存续时间不超过六个月的岗位；辅助性工作岗位是指为主营业务岗位提供服务的非主营业务岗位；替代性工作岗位是指用工单位的劳动者因脱产学习、休假等原因无法工作的一定期间内，可以由其他劳动者替代工作的岗位。

Temporary job positions stipulated in the preceding paragraph shall mean job positions which exist for not more than six months; auxiliary job positions shall mean non- principal business job positions which provide services for principal business job positions; alternative job positions shall mean replacement job positions by other employees arising from the employer's employees going for full-time study or on leave for a certain period of time.

用工单位应当严格控制劳务派遣用工数量，不得超过其用工总量的一定比例，具体比例由国务院劳动行政部门规定。

Employers shall strictly control the number of seconded employees which shall not exceed a certain percentage of their total number of employees, the specific percentage shall be stipulated by the labour administrative authorities of the State Council.

第六十七条   用人单位不得设立劳务派遣单位向本单位或者所属单位派遣劳动者。

Article 67 Employers shall not establish staffing companies to place workers with themselves or their subsidiaries.

第三节 非全日制用工

Section 3 Non-full-time Employment

第六十八条   非全日制用工，是指以小时计酬为主，劳动者在同一用人单位一般平均每日工作时间不超过四小时，每周工作时间累计不超过二十四小时的用工形式。

Article 68 The term "part-time labor" refers to a form of labor for which the remuneration is mainly calculated on an hourly basis, and the employee's average daily working hours shall not exceed 4 hours and the aggregate working hours per week shall not exceed 24 hours for the same Employer.

第六十九条   非全日制用工双方当事人可以订立口头协议。

Article 69 Both parties to part-time labor may conclude an oral agreement.

从事非全日制用工的劳动者可以与一个或者一个以上用人单位订立劳动合同；但是，后订立的劳动合同不得影响先订立的劳动合同的履行。

A part-time worker may conclude a labour contract with one or more employers, provided that subsequently concluded labour contracts shall not affect the performance of previously concluded labour contracts.

第七十条   非全日制用工双方当事人不得约定试用期。

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

第七十一条   非全日制用工双方当事人任何一方都可以随时通知对方终止用工。终止用工，用人单位不向劳动者支付经济补偿。

Article 71 Either of the parties that use non-full-time labor may notify the other party to terminate the labor at any time. Upon termination of employment, the employer shall not pay economic compensation to the worker.

第七十二条   非全日制用工小时计酬标准不得低于用人单位所在地人民政府规定的最低小时工资标准。

Article 72 The hourly remuneration rate for part-time labor shall not be lower than the minimum hourly wage rate prescribed by the local government of the place where the employer is located.

非全日制用工劳动报酬结算支付周期最长不得超过十五日。

The maximum remuneration settlement and payment cycle for part-time labour shall not exceed 15 days.

第六章 监督检查

Chapter 6 Supervision and Inspection

第七十三条   国务院劳动行政部门负责全国劳动合同制度实施的监督管理。

Article 73 The labour administrative department of the State Council shall be responsible for supervision and administration of the labour contract system nationwide.

县级以上地方人民政府劳动行政部门负责本行政区域内劳动合同制度实施的监督管理。

The labour administrative authorities of local People's Governments of county level and above shall be responsible for supervision and administration of the labour contract system within their administrative region.

县级以上各级人民政府劳动行政部门在劳动合同制度实施的监督管理工作中，应当听取工会、企业方面代表以及有关行业主管部门的意见。

The labour administrative authorities of People's Governments of county level and above shall, in the supervision and administration of implementation of the labour contract system, seek the opinions of labour unions, enterprise representatives and the relevant industry administrative authorities.

第七十四条   县级以上地方人民政府劳动行政部门依法对下列实施劳动合同制度的情况进行监督检查：

Article 74 The labor administrative departments of the local governments at the county level or above shall supervise and inspect the following matters in the implementation of the labor contract system in accordance with the law:

(一)用人单位制定直接涉及劳动者切身利益的规章制度及其执行的情况；

1. Employers' formulation of rules and regulations directly related to the vital interests of employees, and the implementation thereof;

(二)用人单位与劳动者订立和解除劳动合同的情况；

(II) employers' conclusion and termination of labor contracts with employees;

(三)劳务派遣单位和用工单位遵守劳务派遣有关规定的情况；

(III) compliance with the relevant labor dispatch provisions by labor dispatch entities and employers;

(四)用人单位遵守国家关于劳动者工作时间和休息休假规定的情况；

(IV) employers' compliance with state regulations on working hours, rest and leave;

(五)用人单位支付劳动合同约定的劳动报酬和执行最低工资标准的情况；

(V) Employers' payment of labor remuneration as specified in the labor contracts and implementation of the minimum wage standards;

(六)用人单位参加各项社会保险和缴纳社会保险费的情况；

(VI) employers' participation in various social insurances and payment of social insurance premiums;

(七)法律、法规规定的其他劳动监察事项。

(VII) Other labor matters as prescribed by laws and regulations.

第七十五条   县级以上地方人民政府劳动行政部门实施监督检查时，有权查阅与劳动合同、集体合同有关的材料，有权对劳动场所进行实地检查，用人单位和劳动者都应当如实提供有关情况和材料。

Article 75 The labour administrative authorities of local People's Governments of county level and above shall, during supervision and inspection, have the right to inspect materials relating to labour contracts and collective contracts, and have the right to conduct onsite inspection at work premises; employers and workers shall provide the relevant information and materials truthfully.

劳动行政部门的工作人员进行监督检查，应当出示证件，依法行使职权，文明执法。

Personnel of labour administrative authorities shall present their identity pass when carrying out supervision and inspection, exercise their official powers pursuant to the law and carry out enforcement in a civilised manner.

第七十六条   县级以上人民政府建设、卫生、安全生产监督管理等有关主管部门在各自职责范围内，对用人单位执行劳动合同制度的情况进行监督管理。

Article 76 The relevant departments of People's Governments of county level and above responsible for supervision and administration of construction, health and work safety etc shall carry out supervision and administration of implementation of the labour contract system by employers within their respective scope of duties.

第七十七条   劳动者合法权益受到侵害的，有权要求有关部门依法处理，或者依法申请仲裁、提起诉讼。

Article 77 Workers whose legitimate rights and interests are infringed upon shall have the right to request the relevant authorities to deal with the matter pursuant to the law, or apply for arbitration or file a lawsuit pursuant to the law.

第七十八条   工会依法维护劳动者的合法权益，对用人单位履行劳动合同、集体合同的情况进行监督。用人单位违反劳动法律、法规和劳动合同、集体合同的，工会有权提出意见或者要求纠正；劳动者申请仲裁、提起诉讼的，工会依法给予支持和帮助。

Article 78 Labour unions shall protect the legitimate rights and interests of workers pursuant to the law, and supervise performance of labour contracts and collective contracts by employers. If an Employer violates any labor laws or regulations or breaches a labor contract or collective contract, the labor union shall have the right to put forward its opinions or request that the matter be rectified; if a worker applies for arbitration or institutes legal proceedings, the labor union shall provide support and assistance in accordance with the law.

第七十九条   任何组织或者个人对违反本法的行为都有权举报，县级以上人民政府劳动行政部门应当及时核实、处理，并对举报有功人员给予奖励。

Article 79 Any organisation or individual shall have the right to report any violation of this Law; the labour administrative authorities of People's Governments of county level and above shall promptly verify and handle the matter and reward persons who have made meritorious report.

第七章 法律责任

Chapter 7 Legal Liabilities

第八十条   用人单位直接涉及劳动者切身利益的规章制度违反法律、法规规定的，由劳动行政部门责令改正，给予警告；给劳动者造成损害的，应当承担赔偿责任。

Article 80 Where regulations with a direct bearing on the immediate interests of an employee are formulated by an Employer in violation of laws or regulations, the labor administrative department shall order rectification and issue a warning; the Employer shall be liable for damages for any harm or loss caused to the employee by such regulations.

第八十一条   用人单位提供的劳动合同文本未载明本法规定的劳动合同必备条款或者用人单位未将劳动合同文本交付劳动者的，由劳动行政部门责令改正；给劳动者造成损害的，应当承担赔偿责任。

Article 81 In case of failure by an Employer to set out the mandatory clauses in the labor contract as prescribed herein or to deliver the text of the labor contract to the employee, the labor administrative department shall order rectification thereof; the Employer shall be liable for damages for any harm or loss caused to the employee by such failure.

第八十二条   用人单位自用工之日起超过一个月不满一年未与劳动者订立书面劳动合同的，应当向劳动者每月支付二倍的工资。

Article 82 If an Employer fails to conclude a written labor contract with an employee more than one month but less than one year after the date on which the employee has started work, the Employer shall, each month, pay to the employee twice his wage.

用人单位违反本法规定不与劳动者订立无固定期限劳动合同的，自应当订立无固定期限劳动合同之日起向劳动者每月支付二倍的工资。

Where an employer violates the provisions of this Law in failing to conclude a non-fixed-term labour contract with a worker, the employer shall pay the worker double wages each month with effect from the date of conclusion of non-fixed-term labour contract.

第八十三条   用人单位违反本法规定与劳动者约定试用期的，由劳动行政部门责令改正；违法约定的试用期已经履行的，由用人单位以劳动者试用期满月工资为标准，按已经履行的超过法定试用期的期间向劳动者支付赔偿金。

Article 83 If the probation period concluded between an Employer and an employee violates this Law, the labor administrative department shall order rectification. If such probation period has been carried out, 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 worker's monthly salary after probation.

第八十四条   用人单位违反本法规定，扣押劳动者居民身份证等证件的，由劳动行政部门责令限期退还劳动者本人，并依照有关法律规定给予处罚。

Article 84 Where an employer violates the provisions of this Law in retaining the identity card etc of a worker, the labour administrative authorities shall order the employer to return the identity card etc to the worker within a stipulated period and shall impose a punishment pursuant to the provisions of the relevant laws.

用人单位违反本法规定，以担保或者其他名义向劳动者收取财物的，由劳动行政部门责令限期退还劳动者本人，并以每人五百元以上二千元以下的标准处以罚款；给劳动者造成损害的，应当承担赔偿责任。

Where an employer violates the provisions of this Law in collection monies from a worker in the name of guarantee or any other pretext, the labour administrative authorities shall order the employer to return the monies to the worker within a stipulated period, and the employer shall be subject to a fine ranging from RMB500 to RMB2,000 per person; where a worker suffers damages thereto, the employer shall bear compensation liability.

劳动者依法解除或者终止劳动合同，用人单位扣押劳动者档案或者其他物品的，依照前款规定处罚。

Where an employer retains the files or any other articles of a worker following rescission or termination of a labour contract by the worker pursuant to the law, the employer shall be punished pursuant to the provisions of the preceding paragraph.

第八十五条   用人单位有下列情形之一的，由劳动行政部门责令限期支付劳动报酬、加班费或者经济补偿；劳动报酬低于当地最低工资标准的，应当支付其差额部分；逾期不支付的，责令用人单位按应付金额百分之五十以上百分之一百以下的标准向劳动者加付赔偿金：

Article 85 If an Employer falls into any of the following circumstances, the labor administrative department shall order the Employer to pay labor remuneration, overtime pay or economic compensation within a specific period of time. If the labor remuneration is lower than the local minimum wage standard, the Employer shall pay the shortfall; if the Employer fails to pay within the time limit, the Employer shall be ordered to pay an additional compensation to the employee at a rate of not less than 50% and not more than 100% of the amount payable.

(一)未按照劳动合同的约定或者国家规定及时足额支付劳动者劳动报酬的；

1. failing to pay an employee his labor remuneration in full and on time as stipulated in the labor contract or as prescribed by the State;

(二)低于当地最低工资标准支付劳动者工资的；

(II) Paying employees wages lower than the local minimum wage standard;

(三)安排加班不支付加班费的；

(III) failing to pay for overtime work;

(四)解除或者终止劳动合同，未依照本法规定向劳动者支付经济补偿的。

(IV) To dissolve or terminate labor contracts without paying economic compensations to the workers in accordance with the provisions of this Law.

第八十六条   劳动合同依照本法第二十六条规定被确认无效，给对方造成损害的，有过错的一方应当承担赔偿责任。

Article 86 The party at fault shall be liable for compensation if a labor contract is confirmed invalid in accordance with Article 26 hereof, and harm has been done to the other party.

第八十七条   用人单位违反本法规定解除或者终止劳动合同的，应当依照本法第四十七条规定的经济补偿标准的二倍向劳动者支付赔偿金。

Article 87 If an Employer cancels or terminates a labor contract in violation of this Law, it shall pay the employee double the amount of damages provided for in Article 47 hereof.

第八十八条   用人单位有下列情形之一的，依法给予行政处罚；构成犯罪的，依法追究刑事责任；给劳动者造成损害的，应当承担赔偿责任：

Article 88 If an Employer falls into any of the following circumstances, it shall be subjected to administrative punishment; if such conduct constitutes a crime, criminal liability shall be pursued in accordance with the law; if the employee suffers any harm or loss as a result thereof, the Employer shall be liable for damages:

(一)以暴力、威胁或者非法限制人身自由的手段强迫劳动的；

1. Forcing the worker to work by means of violence, menace or illegal restriction of personal freedom;

(二)违章指挥或者强令冒险作业危及劳动者人身安全的；

(II) Giving instructions in violation of regulations or forcibly ordering workers to work under risks that may endanger their personal safety;

(三)侮辱、体罚、殴打、非法搜查或者拘禁劳动者的；

(III) Humiliating, giving corporal punishment to, beating, illegally searching or detaining workers;

(四)劳动条件恶劣、环境污染严重，给劳动者身心健康造成严重损害的。

(IV) adverse working conditions and serious environmental pollution, which causes serious damages to the physical and mental health of the workers.

第八十九条   用人单位违反本法规定未向劳动者出具解除或者终止劳动合同的书面证明，由劳动行政部门责令改正；给劳动者造成损害的，应当承担赔偿责任。

Article 89 Where an employer violates the provisions of this Law in failing to issue a written proof of rescission or termination of labour contract to the worker, the labour administrative authorities shall order the employer to make correction; where the worker suffers damages thereto, the employer shall bear compensation liability.

第九十条   劳动者违反本法规定解除劳动合同，或者违反劳动合同中约定的保密义务或者竞业限制，给用人单位造成损失的，应当承担赔偿责任。

Article 90 If an employee cancels his labor contract in violation of this Law or breaches the confidentiality or non-competition obligations stipulated in the labor contract, he shall be liable for damages for any loss caused to the Employer as a result of such violation or breach.

第九十一条   用人单位招用与其他用人单位尚未解除或者终止劳动合同的劳动者，给其他用人单位造成损失的，应当承担连带赔偿责任。

Article 91 If an Employer hires an employee whose labor contract with another Employer has not yet been terminated or cancelled, thereby causing the other Employer to suffer loss, the first-mentioned Employer and the employee shall be jointly and severally liable for damages.

第九十二条   违反本法规定，未经许可，擅自经营劳务派遣业务的，由劳动行政部门责令停止违法行为，没收违法所得，并处违法所得一倍以上五倍以下的罚款；没有违法所得的，可以处五万元以下的罚款。

Article 92 Persons who violate the provisions of this Law to engage in unauthorised labour secondment business without a licence shall be ordered by the labour administrative authorities to stop the illegal act, illegal income shall be confiscated and a fine ranging from one to five times the amount of illegal income shall be imposed; where there is no illegal income, a fine of not more than RMB50,000 may be imposed.

劳务派遣单位、用工单位违反本法有关劳务派遣规定的，由劳动行政部门责令限期改正；逾期不改正的，以每人五千元以上一万元以下的标准处以罚款，对劳务派遣单位，吊销其劳务派遣业务经营许可证。用工单位给被派遣劳动者造成损害的，劳务派遣单位与用工单位承担连带赔偿责任。

Labour secondment units and employers which violate the provisions of this Law on labour secondment shall be ordered by the labour administrative authorities to make correction within a stipulated period; where correction is not made within the stipulated period, a fine ranging from RMB5,000 to RMB10,000 per person shall be imposed, and the labour secondment business permit of the labour secondment unit shall be revoked. Where an employer has caused a seconded worker to suffer damages, the labour secondment unit and the employer shall bear compensation liability jointly and severally.

第九十三条   对不具备合法经营资格的用人单位的违法犯罪行为，依法追究法律责任；劳动者已经付出劳动的，该单位或者其出资人应当依照本法有关规定向劳动者支付劳动报酬、经济补偿、赔偿金；给劳动者造成损害的，应当承担赔偿责任。

Article 93 If an Employer without lawful business operation qualifications commits an illegal or a criminal act, it shall be pursued in accordance with the law. For labor already performed by its employees, the Employer or its investors shall pay them labor remuneration, economic compensation or damages in accordance with the relevant provisions hereof. If the employees suffer any harm or loss as a result thereof, it shall be liable for damages.

第九十四条   个人承包经营违反本法规定招用劳动者，给劳动者造成损害的，发包的组织与个人承包经营者承担连带赔偿责任。

Article 94. Where an individual contractor violates the provisions of this Law in recruiting workers and the workers suffer damages thereto, the organisation which awards the contract and the individual contractor shall bear compensation liability jointly and severally.

第九十五条   劳动行政部门和其他有关主管部门及其工作人员玩忽职守、不履行法定职责，或者违法行使职权，给劳动者或者用人单位造成损害的，应当承担赔偿责任；对直接负责的主管人员和其他直接责任人员，依法给予行政处分；构成犯罪的，依法追究刑事责任。

Article 95 If a labor administrative authority or any other relevant administrative authority or any of their 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 or loss to an employee or an Employer, it/he shall be liable for damages; the direct supervisor in charge and the other persons directly responsible shall be subjected to administrative punishment in accordance with the law; if a crime is constituted, criminal liability shall be pursued in accordance with the law.

第八章 附则

Chapter 8 Supplementary Provisions

第九十六条   事业单位与实行聘用制的工作人员订立、履行、变更、解除或者终止劳动合同，法律、行政法规或者国务院另有规定的，依照其规定；未作规定的，依照本法有关规定执行。

Article 96 Where laws or administrative regulations provide, or the State Council has formulated separate regulations with respect to the conclusion, performance, amendment, termination or cancellation of labor contracts by and between institutions and those of their personnel that are subject to the labor contract system, those matters shall be handled in accordance with such regulations; in the absence of such regulations, matters shall be handled in accordance with this Law.

第九十七条   本法施行前已依法订立且在本法施行之日存续的劳动合同，继续履行；本法第十四条 第二款第三项规定连续订立固定期限劳动合同的次数，自本法施行后续订固定期限劳动合同时开始计算。

Article 97 Existing labour contracts concluded pursuant to the law prior to the implementation of this Law and valid as of the date of implementation of this Law shall continue to be performed; the number of instances of consecutive conclusion of fixed-term labour contracts stipulated in item (3) of the second paragraph of Article 14 shall be computed with effect from the renewal of fixed-term labour contracts following the implementation of this Law.

本法施行前已建立劳动关系，尚未订立书面劳动合同的，应当自本法施行之日起一个月内订立。

Where a written labour contract has not been concluded for a labour relationship established before the implementation of this Law, a written labour contract shall be concluded within one month from the date of implementation of this Law.

本法施行之日存续的劳动合同在本法施行后解除或者终止，依照本法第四十六条规定应当支付经济补偿的，经济补偿年限自本法施行之日起计算；本法施行前按照当时有关规定，用人单位应当向劳动者支付经济补偿的，按照当时有关规定执行。

If a labor contract existing on the implementation date of this Law is terminated or cancelled after the implementation of this Law and, in accordance with Article 46 hereof, financial compensation is payable, the number of years for which the financial compensation is payable shall be calculated from the implementation date of this Law. If, prior to the implementation of this Law, an Employer shall pay financial compensation to the employee in accordance with the relevant provisions at that time, the relevant provisions at that time shall apply.

第九十八条   本法自2008年1月1日起施行。

Article 98 This Law shall go into effect as of January 1, 2008.