

# 中华人民共和国劳动合同法

## Labour Contract Law of the People's Republic of China

June 29, 2007

The Labour Contract Law of the People's Republic of China, adopted at the 28<sup>th</sup> Session of the Standing Committee of the 10<sup>th</sup> National People's Congress on June 29, 2007, is hereby promulgated and shall become effective as of January 1, 2008.

Hu Jintao

President of People's Republic of China

## Table of Contents

|              |  |
|--------------|--|
| Chapter I    | General Provisions                             |
| Chapter II   | Conclusion of Labour Contracts                 |
| Chapter III  | Fulfillment and Amendment of Labour Contracts  |
| Chapter IV   | Termination and Expiration of Labour Contracts |
| Chapter V    | Special Provisions                             |
|              | Section 1. Collective Agreements               |
|              | Section 2. Staff Leasing                       |
|              | Section 3. Part-time Labour                    |
| Chapter VI   | Supervision and Inspection                     |
| Chapter VII  | Legal Responsibility                           |
| Chapter VIII | Supplementary Provisions                       |

## Chapter I General Provisions

### **Article 1**

This Law has been formulated in order to improve the labour contract system, to specify the rights and obligations of the parties of the labour contracts, and to protect the legitimate rights and interests of the labourers, as well as to build and develop harmonious and stable labour relationship.

### **Article 2**

This Law shall apply to the enterprises, individual economic organizations and private non-enterprise units in the People's Republic of China (hereinafter referred to as the employer) on establishment of labour relationships, and conclusion, fulfillment, amendment, termination and expiration of labour contracts with their employees.

The establishment of labour relationships, and conclusion, fulfillment, amendment, termination and expiration of labour contracts by the state departments, public institutions, social organizations and their contracted employees 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, consensus through consultation and negotiation, as well as good faith.

A labour contract concluded in accordance with the law shall possess legal binding force, and the parties involved shall fulfill the obligations as stipulated in the labour contract.

### **Article 4**

The employers shall establish and improve internal rules and regulations, so as to ensure that the employees enjoy their labour rights and fulfilled their labour obligations.

When the employer formulates, modifies or makes decisions on rules, regulations or important issues that are directly related to the immediate interests of its employees, such as wages, working hours, rest and leave, occupational safety and health, insurance and benefits, training, working discipline or work quota management etc., the case shall be discussed with the employee representative congress or all the employees for proposals and comments, whereupon the final decision shall be made through consultations with the Trade Union or the employee representatives on the basis of equality.

During implementation of the employer's rules, regulations or decisions on important issues, in case that the Trade Union or the employee holds inappropriate, the Union or the employee is entitled to present such opinions to the employer, and the rules, regulations or relevant decisions shall be improved by modifications after consultations.

The Rules and regulations, and decisions on important issues that are directly related to the immediate interests of the employees shall be made public or be notified to the employees by the employer.

#### **Article 5**

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

#### **Article 6**

The Trade Unions shall assist and guide the employees in conclusion and fulfillment of the labour contracts with their employers in accordance with the laws and regulations, and establish a collective bargaining mechanism with the employers in order to safeguard the legitimate rights and interests of the employees.

## Chapter II Conclusion of Labour Contracts

#### **Article 7**

An employer's labour relationship with an employee shall be established on the date it recruits the employee. The employer shall keep the records of its employees for references.

#### **Article 8**

Upon recruitment, the employer shall truthfully inform the employees of the content of the work, the working conditions, the work place, occupational hazards, production safety conditions, wages and other issues that the employees request to be informed; and the employer has the right to learn from the employees their basic information that directly relates to the labour contract, which the employees shall truthfully provide.

#### **Article 9**

During recruitment, the employer may not retain the employees' Resident

Identity Card or other credentials, nor may it require them to provide guarantee or collect property from them under other names.

**Article 10**

A written labour contract shall be concluded in establishing a labour relationship.

In case that no written labour contract has been concluded at the time of establishment of a labour relationship, a written labour contract shall be concluded within one month after the date on which the employer recruits the employee.

Where the employer and the employee have concluded a labour contract before the employer starts using the employee, the labour relationship shall be recognized as of the date on which the employer starts using the employee.

**Article 11**

In case that the employer fails to conclude a written labour contract with an employee upon recruitment, or the wage issue has not been clearly specified with the employee, the wage of the concerned employee shall be defined pursuant to the rate specified in the collective agreement; where there is no collective agreement or the wage issue has not been defined in the collective agreement, equal pay shall be provided for equal work.

**Article 12**

A labour contract can be a fixed-term contract, an open-ended contract, or a contract that takes completion of a specific amount of work as a term.

**Article 13**

The fixed-term labour contract is a labour contract whose expiration date has been agreed by the employer and the employee.

The employer and the employee may conclude a fixed-term labour contract upon reaching a consensus through consultation and negotiation.

**Article 14**

The open-ended labour contract is a labour contract in which the employer and the employee have agreed not to stipulate a definite expiration date.

The employer and the employee may conclude an open-ended labour contract upon reaching a consensus through consultation and negotiation. An open-ended labour contract shall be concluded in case that the employee proposes or agrees to renew his labour contract or to conclude a labour contract under any of the following circumstances, with the exception that the

employee requests conclusion of a fixed-term labour contract:

- (1) The employee has been working with the employer for a consecutive period of 10 years;
- (2) Where the employer first introduces the labour contract system, or the employing state-owned-enterprise reconcludes the labour contracts as a result of restructuring, and the employee has been working with the employer for a consecutive period of 10 years and he/she is within 10 years from the statutory retirement age; or
- (3) Prior to the renewal of the labour contract, a fixed-term labour contract has been concluded for two consecutive times, and the employee does not meet any of the circumstances set forth in **Article 39** and items (1) and (2) of **Article 40** hereof.

In case that the employer fails to conclude a written labour contract with the employee within one year upon the date of recruitment, the employer and the employee shall be deemed to have concluded an open-ended labour contract.

#### **Article 15**

A “contract that takes completion of a specific amount of work as a term” is a labour contract in which the employer and the employee have agreed that the completion of a certain job is the term of the contract.

The employer and the employee may, upon reaching a consensus through consultation and negotiation, conclude a labour contract that takes completion of a specific amount of work as a term.

#### **Article 16**

A labour contract shall become valid upon the employer and the employee have reached a consensus through consultation and negotiation, and each of them has signed or sealed the contract.

The employer and the employee shall each hold one copy of the labour contract.

#### **Article 17**

A labour contract shall specify the following clauses:

- (1) The name, domicile and legal representative or main person-in-charge of the employer;
- (2) The name, domicile and the number of the Resident Identity Card or other valid identity document of the employee;

- (3) The term of the labour contract;
- (4) The job description and the place of work;
- (5) Working hours, rest and leave;
- (6) Labour remuneration;
- (7) Social insurance;
- (8) Labour protection, working conditions and protection against occupational hazards; and
- (9) Other issues required to be included in the labour contract by the laws and regulations.

In addition to the required clauses mentioned above, the employer and the employee may agree to stipulate other issues such as probation period, training, confidentiality, supplementary social insurance, welfare and benefits, etc., in the labour contract.

#### **Article 18**

In case that a dispute arises due to that the standards of labour remuneration or working conditions etc. are not explicitly specified in the labour contract, the employer and the employee may renegotiate the concerned issues; If the negotiation fails, relevant provisions in the collective agreement shall apply; where there is no collective agreement or the labour remuneration issue has not been specified in the collective agreement, equal pay shall be provided for equal work; and where there is no collective agreement or the working conditions issue has not been specified in the collective agreement, relevant regulations of the State shall apply.

#### **Article 19**

Where a labour contract has a term above three months but less than one year, the probation period may not exceed one month; for a labour contract with a term above one year but less than three years, the probation period may not exceed two months; and where a labour contract has a term above three years or is open-ended, the probation period may not exceed six months.

The probation period may be agreed and stipulated only once by an employer with any given employee.

No probation period may be specified in a labour contract that takes completion of a specific amount of work as a term or a labour contract with the term of less than three months.

The probation period shall be included in the term of a labour contract. Where a labour contract only provides for a probation period, the probation period shall not be valid and shall be taken as the term of the labour contract.

**Article 20**

The wage of the 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 labour contract, and shall not be less than the minimum wage rate in the place where the employer is located.

**Article 21**

The employer may not terminate the labour contract during the probation period unless the employee meets any of the circumstances set forth in **Article 39** and items (1) and (2) of **Article 40** hereof. In case that the employer terminates a labour contract during the probation period, the reasons shall be notified to the concerned employee.

**Article 22**

In case that the employer provides an employee with special funding for professional technical training, it may conclude an agreement specifying a term of service with the concerned employee.

Where the employee breaches the agreement on the term of service, compensation shall be paid to the employer as agreed. The amount of the compensation shall not exceed the training expenses actually paid by the employer. The compensation requested by the employer shall not exceed the proportional training expenses allocable to the unperformed proportion of the term of service.

The agreement on a term of service between the employer and the employee shall not affect the increase of the employee's labour remuneration during the term of service according to the normal wage adjustment mechanism.

**Article 23**

The employer and the employee may agree upon provisions on confidentiality issues in the labour contract to keep the confidentiality of the trade secrets and intellectual property of the employer.

In case that an employee bears the confidentiality obligation, the employer, together with the concerned employee may agree upon competition restriction provisions in the labour contract or a confidentiality agreement, and financial compensation to the employee on a monthly basis by the employer during the term of the competition restriction upon termination or expiration of the labour contract may be agreed by the parties involved. Where the employee breaches the competition restriction provisions, he/she shall pay compensations to the employer as agreed.

#### **Article 24**

The personnel subject to competition restrictions with the employer shall be limited to the senior management, senior technicians and other personnel with confidentiality obligations. The scope, territory and term of the competition restrictions shall be agreed upon by the employer and the employee, and such agreement shall not run counter to the laws and regulations.

Upon termination or expiration of the labour contract, the term of competition restrictions for the personnel subject to competition restrictions as mentioned in the preceding paragraph, working for a competing employer that produces the same type of products, or being engaged in the same type of business against their previous employer, or establishing their own business to produce the same type of products or engage in the same type of business, shall not exceed two years.

#### **Article 25**

The employer shall not stipulate with the employee the provisions on any compensation borne by the employee, with the exception of the circumstances specified in **Article 22** and **Article 23** hereof.

#### **Article 26**

A labour contract shall be invalid or partly invalid under the following circumstances:

- (1) The labour contract is concluded or modified by resorting to deception or intimidation, or taking advantage of the other party's difficulties, which run against the other party's true will;
- (2) The employer disclaims its legal liability, or denies the rights of the employees, or
- (3) The labour contract is concluded in violation of laws, administrative rules and regulations.

Disputes over invalidity or partly invalidity of the labour contracts shall be confirmed by the Labour Disputes Arbitration Institutions or the People's Court.

#### **Article 27**

In case that part of a labour contract is confirmed as invalid while the validity of the remaining part is not affected, the remaining part shall remain valid.

#### **Article 28**

In case that a labour contract is confirmed invalid and the employee has already provided labour service, the employer shall pay the concerned employee labour remuneration. The amount of labour remuneration shall be defined considering the wages of the employees in the same or a similar

position with the employer.

### Chapter III Fulfillment and Amendment of Labour Contracts

#### **Article 29**

The employer and the employee shall each fully fulfill the obligations in accordance with the labour contract.

#### **Article 30**

The Employers shall pay their employees labour remuneration on time and in full amount in accordance with the labour contracts and the state regulations.

In case that the employer falls into arrears with the payment of labour remuneration or fails to make payment in full amount, the concerned 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**

The employers shall strictly implement the work quota standards and shall not force or in a disguised manner force the employees to work overtime. Where the employers arrange the employees to work overtime, overtime payment shall be paid to the employees in accordance with relevant state regulations.

#### **Article 32**

The employees shall not be held in breach of the labour contracts where they refuse to perform dangerous operations that are instructed in violation of the regulations or peremptorily ordered by the management staff of the employer.

The employees have the right to criticize, report or to lodge complaints against their employers in respect of working conditions that will endanger their lives or health.

#### **Article 33**

The fulfillment of the labour contracts shall not be affected in case of changes in the name, legal representative or main person-in-charge, or the investor(s) of the employer.

#### **Article 34**

In case of merge or division of the employer, the existing labour contracts shall remain valid, and shall continue to be fulfilled by the employer(s) that succeeded to bear the corresponding rights and obligations.

**Article 35**

The employer and the employee may make amendments on the provisions of their labour contract upon agreement through consultations and negotiations. The amendments to a labour contract shall be made in written form.

The employer and the employee shall each hold one copy of the amended labour contract.

Chapter IV Termination and Expiration of Labour Contracts

**Article 36**

The labour contract may be terminated upon agreement through consultations and negotiations between the employer and the employee.

**Article 37**

The employee may terminate the labour contract with a written notice to the employer 30 days in advance. During the probation period, the employee may terminate the labour contract with a three-day prior notice.

**Article 38**

The employee may terminate the labour contract in case that the employer meet any of the following circumstances:

- (1) The employer fails to provide labour protection or working conditions as specified in the labour contract;
- (2) The employer fails to pay labour remuneration on time and in full amount;
- (3) The employer fails to make social insurance contributions for the employee in accordance with the law;
- (4) The employer's internal rules and regulations violate the laws or regulations, and thereby have harmed the employee's rights and interests;
- (5) The labour contract becomes invalid due to the circumstance specified in the first paragraph of **Article 26** hereof;
- (6) Other circumstances as stipulated by relevant laws and regulations that permit the employee to terminate the labour contract.

In case that the employer resorts to violence, threats or illegal restriction of personal freedom to force the employee to work, or that the employee is instructed in violation of rules and regulations or peremptorily ordered by the employer to perform dangerous operations which will threaten his personal safety, the employee may terminate the labour contract immediately without giving a notice in advance to the employer.

### **Article 39**

The employer may terminate the labour contract in case that the employee meet any of the following circumstances:

- (1) The employee has been proved during the probation period not up to the requirement of employment;
- (2) The employee has seriously violated the rules and regulations of the employer;
- (3) The employee has caused substantial losses to the employer due to serious dereliction of duty or engagement in malpractice for selfish ends;
- (4) The employee has meanwhile established labour relationship with another employer which has seriously affected the completion of his working tasks with the original employer, or the employee refuses to redress after the issue has been brought to his attention by the original employer;
- (5) The labour contract becomes invalid due to the circumstance specified in item (1) of the first paragraph of **Article 26** hereof; or
- (6) The employee has been investigated for criminal responsibilities in accordance with the law.

### **Article 40**

In any of the following circumstances, the employer may terminate the labour contract with a written notice given to the concerned employee 30 days in advance, or one month's wage in lieu of notice paid to the employee:

- (1) The employee is unable to take up his original work or any new work arranged by the employer after the completion of the stipulated medical treatment for illness or non-work-related injury;
- (2) The employee is unqualified for his work and remains unqualified even after receiving training or adjustment to other working post; and
- (3) No agreement on amendment to the labour contract may be reached through consultation and negotiation by the employer and employee, where the objective conditions taken as the basis for conclusion of the contract have changed dramatically so that the original labour contract shall no longer be fulfilled.

### **Article 41**

In any of the following circumstances, if it is necessary to reduce the workforce by over 20 persons or by a number of persons that is less than 20 but accounts for above 10 percent of the total number of the employees, the employer may make the reduction upon considering the opinions of its Trade Union or all the employees after it has explained the circumstances to the Trade Union or to its employees 30 days in advance, and the workforce reduction plan then has been reported to the labour administration authorities:

- (1) The employer is undergoing restructuring pursuant to the Enterprise Bankruptcy Law;
- (2) The employer is experiencing serious difficulties in production or business operations;
- (3) The employer has switched to the manufacturing of another line of products, or introduced a major technological innovation, or revised its business operation method, and the employer still needs to reduce its workforce upon amendment of the labour contracts; or
- (4) The other objective conditions taken as the basis for conclusion of the contract have changed dramatically so that the original labour contract shall no longer be fulfilled.

In reducing the workforce, the employer shall retain the following category of personnel with priority:

- (1) Those have concluded with the employer fixed-term labour contracts with a relatively long term;
- (2) Those have concluded open-ended labour contracts with the employer; or
- (3) Those who are the only employed in their families and whose families have dependant elderly or minor for whom they need to support.

In case that the employer reducing its workforce pursuant to the stipulations in the first paragraph of this Article is to make new recruitment within six months upon downsizing, it shall give notice to the dismissed personnel, and recruit them on a preferential basis if they are on the equal footing with other applicants.

#### **Article 42**

The employer shall not terminate the labour contract pursuant to **Article 40** or **Article 41** if the employee meets any of the following conditions:

- (1) The employee engaged in operations exposing to hazards of occupational disease has not undergone the off-work occupational health check, or the employee with suspected occupational disease is being diagnosed or under medical observation;
- (2) The employee has been confirmed to have totally or partially lost working capability due to occupational diseases or work-related injuries with the employer;
- (3) The employee is receiving medical treatment for illness or non-work-related injuries within the stipulated medical treatment period;
- (4) Female employee during pregnant, puerperal, or breast-feeding period;
- (5) The employee has been working with the employer for over 15 consecutively years, and is within 5 years from the statutory retirement age;

(6) Other circumstances as stipulated in relevant laws and regulations.

#### **Article 43**

Where the employer is to terminate the labour contract unilaterally, it shall notify the Trade Union of the reason in advance. In case that the employer violates the laws, regulations or agreement in the labour contract, the Trade Union has the right to ask the employer to redress the issue. The employer shall study the opinions of the Trade Union and notify the Trade Union of the redress outcome in written form.

#### **Article 44**

A labour contract shall be terminated under any of the following circumstances:

- (1) Expiration of the labour contract;
- (2) The employee has started to receive basic pension benefits in accordance with the laws;
- (3) The employee dies, or is declared dead or missing by the People's Court;
- (4) The employer is declared bankrupt in accordance with the laws;
- (5) The employer has its business license revoked, or is ordered to close or be revoked, or the employer decides on early dissolution; or
- (6) Other circumstance as specified in relevant laws and regulations.

#### **Article 45**

In case of expiration of the labour contract and occurrence of any of the circumstances as specified in **Article 42**, the term of the labour contract shall be extended until the time that relevant circumstance ceases to exist. However, termination of the labour contract with the employee who has lost or partly lost his working capacity as specified in item (2) of **Article 42** shall be handled in accordance with state regulations on insurance for work-related injuries.

#### **Article 46**

The employer shall be liable to pay the employee economic compensation in any of the following circumstances,

- (1) The labour contract is terminated by the employee pursuant to the stipulations in **Article 38**;
- (2) The employer proposes to terminate the labour contract to the employee pursuant to the stipulations in **Article 36**, and the labour contract is terminated after the concerned parties reach an agreement thereon after consultations and negotiations;
- (3) The labour contract is terminated by the employer pursuant to the stipulations in **Article 40** hereof;
- (4) The labour contract is terminated by the employer pursuant to the stipulations in the first paragraph of **Article 41** hereof;

- (5) The labour contract is terminated pursuant to the stipulations in item (1) of **Article 44**, with the exception that the employee does not agree to renew the fix-term labour contract even though the conditions offered by the employer are the same or better than those stipulated in the current contract;
- (6) The labour contract is terminated pursuant to the stipulations in item (4) or (5) of **Article 44** hereof;
- (7) Other circumstances as specified in relevant laws and regulations.

#### **Article 47**

The economic compensation shall be paid to the employee based on the number of years of service with the employer at the rate of one month's wage for each full year's service. The service period over six months but less than one year shall be counted as one year; and the economic compensation payable to the employee for a service period less than six months shall be half of his monthly wages.

If the monthly wage of the employee exceeds three times the average employees' monthly wage published by the People's Government at the level of municipality or city with districts where the employer is located, the standard of economic compensation payable shall be three times the average monthly wage of employees in this region and the years of service counted for economic compensation shall not exceed 12 years.

Monthly wage in this Article refers to the concerned employee's average monthly wage for the last 12 months prior to termination of the labour contract.

#### **Article 48**

In case that the employer has terminated or ended the labour contract in violation of this Law while the employee demands continued fulfillment of such contract, the employer shall resume fulfillment of the contract; where the employee does not demand continued fulfillment of the labour contract, or continued fulfillment of the labour contract has become impossible, the employer shall pay economic compensations pursuant to the stipulations in **Article 87** hereof.

#### **Article 49**

The state shall take measures to establish and improve a comprehensive system that enables the employee's social insurances be transferred from one region to another when the employee changes workplace.

#### **Article 50**

Upon termination or expiration of the labour contract, the employer shall produce a proof of termination or expiration of the labour contract and, within

15 days, handle the transferal procedures of the concerned employee's files and social insurances.

The employee shall handle the procedures for handover of his work as per the agreement by the involved two parties. Where relevant stipulations of this Law require the employer to pay economic compensation to the employee, the payment shall be paid upon completion of the procedures for work handover.

The employer shall keep the files of the terminated or expired labour contracts for at least two years for reference purposes.

## Chapter V Special Provisions

### Section 1. Collective Agreements

#### Article 51

The employees, as one party, and their employer may, upon bargaining on an equal basis, conclude a collective agreement on the issues as labour remuneration, working hours, rest and leave, occupational safety and health, insurance and benefits, etc. The draft of the collective agreement shall be presented to the employee representative congress or all the employees for discussion and approval.

A collective agreement shall be concluded by the employer, and the Trade Union on behalf of the employees. In case that there is no Trade Union with the employer, the collective agreement shall be concluded by the representative elected by the employees under the guidance of the Trade Union at the upper level.

#### Article 52

The employees, as one party, and their employer may enter into specialized collective agreements on issues of occupational safety and health, protection of the rights and interests of the female employees, wage adjustment mechanism, etc.

#### Article 53

In administration areas that under county level, collective agreements applicable to the whole industry or whole area may be concluded between the Trade Union and the representatives on behalf of the employers in the industries of construction, mining, catering services, etc.

#### Article 54

The collective agreement shall be submitted to the labour administration

authorities upon its conclusion; and the collective agreement shall become effective in 15 days upon the date of receipt by the labour administration authorities, with the exception that the labour authorities raise any objections to the contract within the period.

A collective agreement concluded in accordance with the law shall possess legal binding force on the employers and the employees. And the industry-wide or area-wide collective agreement has legal binding force on the employers and the employees in the industry or area in the locality concerned.

#### **Article 55**

The rates for labour remuneration, standards for working conditions, etc. that stipulated in the collective agreement shall not be lower than the minimum rates and standards as prescribed by the local People's Government; and the rates for labour remuneration, standards for working conditions, etc. that stipulated in the labour contract between the employer and the employee shall not be lower than those stipulated in the collective agreement.

#### **Article 56**

In case that the employer's breach of the collective agreement has infringed upon the employees' labour rights and interests, the Trade Union may demand the employer shoulder its liability in accordance with the law; and where a dispute arising from fulfillment of the collective agreement may not be resolved through consultations and negotiations, the Trade Union may apply for labour arbitration and lodge a lawsuit according to the laws and regulations.

### **Section 2. Staff Leasing**

#### **Article 57**

The staff leasing service companies shall be established in accordance with relevant provisions of the Company Law of People's Republic of China, and the registered capital shall not be less than RMB 500,000 yuan.

#### **Article 58**

The staff leasing service companies are the employers as mentioned in this Law that owe the obligations of employer to its employees. The labour contract between the staffing leasing companies and the employees to be placed shall, in addition to the issues stipulated in **Article 17**, specify the issues such as the client company with which the employee is to be placed, the term of placement, and the position where the employee is to be assigned, etc.

The labour contracts between staff leasing service company and the employees shall be fixed term contract with a term of no less than two years.

The staff leasing service company shall pay labour remuneration on a monthly basis. In case that there is no job available for the employees to be placed, the staff leasing service company shall pay the employees the minimum wage as prescribed by the People's Government of the locality where the staff leasing service company is located on a monthly basis.

#### **Article 59**

The staff leasing service company shall reach an agreement with the company that accepts the staff (hereunder referred to as "the client company") covering issues such as the assigned working positions, the number of assigned workers, the term of placement, the amount and method of payment of labour remuneration and social insurance contributions, as well as the liabilities of breaching the agreement.

The client company shall determine with the staff leasing service company on the term of placement based on the actual situations of the vacancies available in the client company, and an integral staff leasing agreement shall not be dissected into several short-term placement agreements.

#### **Article 60**

The staffing leasing company shall inform the placed employees of the content of the placement agreements.

The staffing leasing company may not pocket any part of the labour remuneration that the client company pays to the employees in accordance with the placement agreement.

The staffing leasing company and the client company may not charge the placed employees any fees.

#### **Article 61**

In case of cross-region staff leasing, the standards of the placed employee's labour remuneration and working conditions shall be in line with those in the region where the client company is located.

#### **Article 62**

The client company shall fulfill the following obligations:

- (1) To implement the state labour standards and to provide corresponding working conditions and labour protection;
- (2) To inform the employees the work requirements and labour remuneration standards;
- (3) To pay over-time rates and performance bonuses, and to offer benefits that

- pertain to the nature of the working positions;
- (4) To provide the placed employees with the training necessary for their working positions; and
  - (5) To implement a regular wage adjustment system in case of continuous placement of the employees.

The client company may not in turn place the employees with any other third party.

#### **Article 63**

The placed employees are entitled to the same pay received by workers employed by the client company for the same work. In case that a client company has no employee engaged in the same position, the labour remuneration standards shall be determined with reference to the pay rates of the employees engaged in the same or similar positions of comparable companies in the same region.

#### **Article 64**

The placed employees have the right to join the Trade Union either of their staffing leasing company or the client company, or to organize such unions in accordance with the law, so as to protect their legitimate rights and interests.

#### **Article 65**

The placed employees may terminate their labour contracts with their staffing leasing company pursuant to the stipulations in **Article 36** or **38** hereof.

Under any of the circumstances stipulated as in **Article 39** and items (1) and (2) of **Article 40** hereof, the client company may return the placed employee to the staffing leasing company, which may terminate its labour contract with the concerned employee in accordance with relevant provisions of this Law.

#### **Article 66**

The placement of employees shall generally be practiced for temporary, auxiliary or substitute jobs.

#### **Article 67**

The employer shall not establish a staff leasing service company to place employees into its own facilities or its own affiliated facilities.

### Section 3. Part-time Labour

#### **Article 68**

Part-time labour mainly refers to the hour-rate based employment relationship

where the employee works no more than 4 hours per day and less than 24 hours per week on average with one employer.

**Article 69**

The two parties in a part-time employment relationship may enter into a verbal agreement.

The employees engage in part-time labour may enter into a labour contract with one or more employers, while a subsequently concluded labour contract shall not prejudice the fulfillment of any previously concluded contract.

**Article 70**

The two parties to part-time labour shall not stipulate a probation period in the part-time labour contract.

**Article 71**

Either of the two parties to part-time labour may terminate the labour contract on short notice to the other party at any time. No economic compensation shall be payable by the employer to the employee upon termination of the contract.

**Article 72**

The hourly wage rate for part-time labour may not be lower than the minimum hourly wage rate prescribed by the People's Government of the region where the employer is located.

The labour remuneration for part-time labour shall be settled at least every 15 days.

## Chapter VI Supervision and Inspection

**Article 73**

The labour administration authority under the State Council shall be responsible for overseeing and managing the implementation of the labour contract system nationwide.

The labour administration authorities of the People's Governments at or above county level shall be responsible for overseeing and managing the implementation of the labour contract system within their respective jurisdictions.

While overseeing and managing the implementation of the labour contract system, the labour administration authorities of People's Governments at or above the county level shall consider the suggestions and opinions of the

Trade Unions, the representatives of the employers and the administrative authorities in charge of the industries concerned.

#### **Article 74**

The labour administration authorities of local People's Governments at or above county level shall, in accordance with the law, conduct monitoring inspections on the following aspects of the implementation of the labour contract system,

- (1) Formulation and implementation of internal regulations and rules by the employers that directly relate to the immediate interests of the employees;
- (2) Conclusion and termination of the labour contracts by the employers and the employees;
- (3) Compliance of the provisions on staff leasing by the staff leasing service companies and their client companies;
- (4) Employers' compliance to state regulations in relation to working hours, rests and leaves;
- (5) Employers' compliance to the labour remuneration as agreed in the labour contracts, and implementation of the minimum wage standards;
- (6) Employers' compliance to the contribution obligations of various social insurance schemes; and
- (7) Other issues for labour inspections as prescribed by relevant laws and regulations.

#### **Article 75**

While implementing labour inspections the labour administration authorities of the People's Governments at or above county level have the right to review the documents related to the labour contracts or collective contracts at issue, or conduct on-site investigations, and the employers or employees involved shall truthfully provide relevant information and materials.

On carrying out labour inspections, the labour inspectors shall present their certificates and fulfill their duties in a lawful and well-disciplined manner.

#### **Article 76**

The competent authorities of the People's Governments at or above county level that are in charge of city construction, public health, occupational health and safety shall make inspections on the employers in relation to the implementation of the labour contract system according to their respective purviews.

#### **Article 77**

The employees whose lawful rights and interests have been infringed upon shall have the right to bring the cases to relevant authorities according to the

laws, or to apply for arbitrations and file a lawsuit according to the laws.

**Article 78**

The Trade Unions shall safeguard the legitimate rights and interests of the employees in accordance with the law, and monitor the fulfillment of the labour contracts and collective agreements by the employers. In case that the employer violates the labour laws or regulations, or breaches the labour contract or collective agreement, the Trade Union has the right to voice its opinions or require the issues be rectified. Where the employee applies for arbitration or files a lawsuit, the Trade Union shall provide support and assistance in accordance with the laws.

**Article 79**

Any organization or individual may report violations and offences against this Law. The labour administration authorities of the People's Governments at or above county level shall timely examine and handle the cases, and reward the persons worthy of merit in reporting the cases.

## Chapter VII Legal Responsibility

**Article 80**

In case that the employer's internal rules directly related to the immediate interests of the employees are found to have violated the laws or administrative regulations, the labour administration authority shall order the employer for correction and give a warning, where the internal rules are found to have caused damages on the employees, the damages shall be compensated by the employer concerned.

**Article 81**

In case that the text of the labour contract provided by the employer lacks any of the mandatory clauses required by this Law to be included in such contracts, or that the employer fails to deliver the copy of the labour contract to the employee, the labour administration authority shall order rectification; where any damage has been caused on the employee as a result thereof, the employer shall be liable for compensating the damages.

**Article 82**

In case the employer fails to conclude a written labour contract with the employee over one month but less than one year since the date of recruitment, the employer shall pay double amount of the monthly wages to the employee for the period when the mandated written labour contract is absent.

In case that the employer, in violation of this Law, fails to conclude an open-ended labour contract with the employee, it shall pay double amount of the monthly wages to the concerned employee for the period commencing from the date on which the open-end labour contract should have been concluded.

**Article 83**

In case that the employer has set a probation period that contravenes the provisions of this Law, the labour administration authority shall order rectification; where the illegally stipulated probation has been performed, the employer shall pay compensation to the concerned employee at the rate of the employee's normal monthly wage upon completion of the probation for the time worked beyond the statutory probation period.

**Article 84**

In case that the employer violates this Law by retaining the employee's Resident Identity Card or other certificates, the labour administration authority shall order the Resident Identity Card or other certificates be returned to the employee within a prescribed period of time, and meanwhile, impose a fine in accordance with the provisions of relevant laws.

In case that the employer violates this Law by collecting property or personal belongings from the employees as guarantee or under some other guise, the labour administration authority shall order the property or personal belongings be returned to the employees within a prescribed period of time, and impose a fine on the employer at the rate of RMB 500 yuan to RMB 2,000 yuan per concerned person; where any damage has been caused on the employee as a result thereof, the employer shall be liable for compensating the damages..

In case that the employer retains the employee's personal files or other personal belongings after the employee lawfully terminates or ends the labour contract, a penalty shall be imposed in accordance with the stipulations in the preceding paragraph.

**Article 85**

The labour administration authority, under the following circumstances, shall order the employer to pay labour remuneration, overtime pay or economic compensation within a prescribed period of time; where the standard of the labour remuneration is lower than the local minimum wage rate, the employer shall make up the balance; where the due payment is not made within the time limit, the employer shall be ordered to pay additionally damages to the employee rating between 50 percent to 100 percent of the amount payable,

- (1) The employer fails to pay the employee labour remuneration on time and in full amount as stipulated in the labour contract or prescribed by the state;
- (2) The employer pays the employee labour remuneration at a rate lower than the local minimum wage rate;
- (3) The employer arranges overtime without making overtime pay; or
- (4) The employer terminates or ends the labour contract without paying the employee economic compensation pursuant to this Law.

#### **Article 86**

In case that a labour contract is confirmed invalid in accordance with **Article 26** and damages have been caused on one party as the result, the party at fault shall be liable for compensating the damages.

#### **Article 87**

In case that the employer, in violation of this Law, terminates or ends the labour contract, it shall be liable for paying the damages rating two times the economic compensation as prescribed in Article 47 thereof.

#### **Article 88**

The employer, under the following circumstances, shall be subject to administrative punishment, or criminal charge if its conduct has constituted criminal offences; and be liable for the damages if the employee concerned is found to have suffered harm as a result of the offence committed by the employer.

- (1) The employer resorts to illegal means such as violence, threat, intimidation or illegal restriction of personal freedom to force the employees to work;
- (2) The employer violates the laws and regulations by engaging the employees in hazardous operations that menacing personal safety of the employees;
- (3) The employer offends the employees by humiliation, physical punishment, battery, illegal searches or detention; or
- (4) The employer engages the employees in abominable working conditions or heavily polluted environments resulting in serious harm to physical or mental health of the employees.

#### **Article 89**

In case that the employer, in violation of this Law, fails to provide the employee with the certificate proving termination or ending of the labour contract, the labour administration authority shall order rectification, where the employee suffers harm as a result of such failure, the employer shall be liable for compensating the damages.

#### **Article 90**

In case that the employee, in violation of this Law or breaching the

confidentiality or competition restriction obligations as stipulated in the labour contract, terminates the labour contract, and such violation or breach has caused harm or damages to the employer, the employee shall be liable for compensating the damages.

**Article 91**

In case that the employer recruits an employee whose labour contract with another employer has not yet been terminated or expired, causing damage or loss to the other employer, this employer shall jointly and severally be liable with the employee for compensating the damages.

**Article 92**

In case that the staffing leasing company violates this Law, the labour administration authority and other relevant competent authorities shall order the company for rectification, where the case is found to be of serious circumstances or consequences, a fine between RMB1,000 to 5,000 yuan per concerned head shall be imposed, and the administration for industry and commerce shall revoke the business license of the company; If harm or damage has been caused to the placed employee, the staffing leasing company, as well as the client company shall jointly and severally be liable for compensating the damages.

**Article 93**

Any employer without necessary legal qualifications for business operations shall be pursued the legal liability for its illegal or criminal acts according to the laws; in case that its employees have already provided labour service, the employer, or its investors shall pay them labour remuneration, economic compensation or damage in accordance with relevant provisions of this Law; where the employees are found to have suffered harm or damages as a result thereof, the damages shall be paid accordingly.

**Article 94**

In case that the individual subcontractor, in violation of this Law, recruits employees and causes damage to the employees, the general contractor, as well as the individual subcontractor shall be held jointly and severally liable for compensating the damages.

**Article 95**

In case that misconducts such as dereliction of duties, failure to excise the statutory duties, abuse of power committed by the labour administration authorities or other competent administrative authorities and their officials or staff members are found to have caused damage to the employees or employers, the administrative authorities shall be held liable for the damages; meanwhile, both the responsible personnel and the officials directly in charge

thereof are subject to administrative penalties, or criminal charges if criminal offences has been constituted.

## Chapter VIII Supplementary Provisions

### **Article 96**

The provisions stipulated in the laws, administrative regulations, or rules by the State Council on conclusion, fulfillment, amendment, termination or expiration of labour contracts by and between the public institutions and those of their recruited working personnel on contractual basis shall take precedence of the provisions in this Law. In the absence of provisions in such laws, regulations or rules, this Law shall apply.

### **Article 97**

The labour contracts concluded in accordance with the laws prior to the implementation of this Law and continuing to exist on the implementation date of this Law shall continue to be fulfilled. For the purposes of item (3) of the second paragraph of **Article 14** hereof, the number of consecutive occasions on which a fixed-term labour contract is concluded shall be counted since the first renewal of such contract after the implementation of this Law.

In case that a labour relationship is established prior to the implementation of this Law without conclusion of a written labour contract, a written contract shall be concluded within one month since the implementation of this Law.

In case that a labour contract concluded before the implementation date of this Law is terminated or expires after the implementation of this Law, and pursuant to **Article 46** hereof, economic compensation is payable, the number of years for which economic compensation is payable shall be counted since the implementation date of this Law; where the employee is entitled to economic compensation under relevant regulations in effect prior to the implementation of this Law, the payment shall be handled in accordance with the relevant regulations that were in effect at that time.

### **Article 98**

This Law shall become effective as of January 1, 2008.

**(In case of any discrepancy between the English translation and the original Chinese text, the Chinese text shall prevail. --- the translator)**

## 中华人民共和国劳动合同法

中华人民共和国主席令第六十五号

《中华人民共和国劳动合同法》已由中华人民共和国第十届全国人民代表大会常务委员会第二十八次会议于2007年6月29日通过，现予公布，自2008年1月1日起施行。

中华人民共和国主席 胡锦涛

2007年6月29日

### 中华人民共和国劳动合同法

(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)

#### 目 录

#### 第一章 总 则

#### 第二章 劳动合同的订立

#### 第三章 劳动合同的履行和变更

#### 第四章 劳动合同的解除和终止

#### 第五章 特别规定

##### 第一节 集体合同

##### 第二节 劳务派遣

##### 第三节 非全日制用工

#### 第六章 监督检查

#### 第七章 法律责任

#### 第八章 附 则

## 第一章 总 则

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。

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。

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。

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。

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。

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。

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。

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。

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。

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。

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。

## 第二章 劳动合同的订立

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。

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。

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。

第十条 建立劳动关系，应当订立书面劳动合同。

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。

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。

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。

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。

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。

用人单位与劳动者协商一致，可以订立固定期限劳动合同。

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。

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：

(一) 劳动者在该用人单位连续工作满十年的；

(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；

(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。

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。

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。

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。

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。

劳动合同文本由用人单位和劳动者各执一份。

第十七条 劳动合同应当具备以下条款：

- (一) 用人单位的名称、住所和法定代表人或者主要负责人；
- (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；
- (三) 劳动合同期限；
- (四) 工作内容和工作地点；
- (五) 工作时间和休息休假；
- (六) 劳动报酬；
- (七) 社会保险；
- (八) 劳动保护、劳动条件和职业危害防护；
- (九) 法律、法规规定应当纳入劳动合同的其他事项。

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。

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。

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。

同一用人单位与同一劳动者只能约定一次试用期。

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。

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。

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。

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。

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。

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。

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。

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。

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。

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。

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。

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。

第二十六条 下列劳动合同无效或者部分无效：

(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；

(二) 用人单位免除自己的法定责任、排除劳动者权利的；

(三) 违反法律、行政法规强制性规定的。

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。

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。

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。

### 第三章 劳动合同的履行和变更

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。

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。

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。

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。

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。

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。

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。

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。

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。

变更后的劳动合同文本由用人单位和劳动者各执一份。

#### 第四章 劳动合同的解除和终止

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。

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。

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：

- (一) 未按照劳动合同约定提供劳动保护或者劳动条件的；
- (二) 未及时足额支付劳动报酬的；
- (三) 未依法为劳动者缴纳社会保险费的；
- (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；
- (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；
- (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。

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。

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：

- (一) 在试用期间被证明不符合录用条件的；
- (二) 严重违反用人单位的规章制度的；
- (三) 严重失职，营私舞弊，给用人单位造成重大损害的；
- (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；
- (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；
- (六) 被依法追究刑事责任的。

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：

(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；

(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；

(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。

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：

(一) 依照企业破产法规定进行重整的；

(二) 生产经营发生严重困难的；

(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；

(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。

裁减人员时，应当优先留用下列人员：

(一) 与本单位订立较长期限的固定期限劳动合同的；

(二) 与本单位订立无固定期限劳动合同的；

(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。

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。

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：

- (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；
- (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；
- (三) 患病或者非因工负伤，在规定的医疗期内的；
- (四) 女职工在孕期、产期、哺乳期的；
- (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；
- (六) 法律、行政法规规定的其他情形。

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。

第四十四条 有下列情形之一的，劳动合同终止：

- (一) 劳动合同期满的；
- (二) 劳动者开始依法享受基本养老保险待遇的；
- (三) 劳动者死亡，或者被人民法院宣告死亡或者宣告失踪的；
- (四) 用人单位被依法宣告破产的；
- (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；
- (六) 法律、行政法规规定的其他情形。

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。

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：

- (一) 劳动者依照本法第三十八条规定解除劳动合同的；
- (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；
- (三) 用人单位依照本法第四十条规定解除劳动合同的；
- (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；
- (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；
- (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；
- (七) 法律、行政法规规定的其他情形。

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。

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。

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。

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。

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。

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。

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。

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。

## 第五章 特别规定

### 第一节 集体合同

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。

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。

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。

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。

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。

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。

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。

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。

## 第二节 劳务派遣

第五十七条 劳务派遣单位应当依照公司法的有关规定设立，注册资本不得少于五十万元。

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。

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。

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。

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。

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。

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。

劳务派遣单位和用工单位不得向被派遣劳动者收取费用。

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。

第六十二条 用工单位应当履行下列义务：

（一）执行国家劳动标准，提供相应的劳动条件和劳动保护；

（二）告知被派遣劳动者的工作要求和劳动报酬；

（三）支付加班费、绩效奖金，提供与工作岗位相关的福利待遇；

（四）对在岗被派遣劳动者进行工作岗位所必需的培训；

（五）连续用工的，实行正常的工资调整机制。

用工单位不得将被派遣劳动者再派遣到其他用人单位。

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。

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。

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。

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。

第六十六条 劳务派遣一般在临时性、辅助性或者替代性的工作岗位上实施。

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。

### 第三节 非全日制用工

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。

第六十九条 非全日制用工双方当事人可以订立口头协议。

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。

第七十条 非全日制用工双方当事人不得约定试用期。

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。

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。

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。

## 第六章 监督检查

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。

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。

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。

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：

- (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；
- (二) 用人单位与劳动者订立和解除劳动合同的情况；
- (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；
- (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；
- (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；
- (六) 用人单位参加各项社会保险和缴纳社会保险费的情况；
- (七) 法律、法规规定的其他劳动监察事项。

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。

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。

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。

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。

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。

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。

## 第七章 法律责任

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。

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。

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。

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。

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。

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。

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。

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。

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：

- (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；
- (二) 低于当地最低工资标准支付劳动者工资的；
- (三) 安排加班不支付加班费的；
- (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。

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。

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。

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：

- (一) 以暴力、威胁或者非法限制人身自由的手段强迫劳动的；
- (二) 违章指挥或者强令冒险作业危及劳动者人身安全的；
- (三) 侮辱、体罚、殴打、非法搜查或者拘禁劳动者的；
- (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。

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。

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。

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。

第九十二条 劳务派遣单位违反本法规定的，由劳动行政部门和其他有关主管部门责令改正；情节严重的，以每人一千元以上五千元以下的标准处以罚款，并由工商行政管理部门吊销营业执照；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。

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。

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。

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。

## 第八章 附 则

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。

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。

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。

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。

第九十八条 本法自 2008 年 1 月 1 日起施行。