

UNOFFICIAL TRANSLATION BY GRANDALL LEGAL GROUP

**Implementing Regulations for the Labor Contract Law of
the People's Republic of China**

CHAPTER ONE GENERAL PRINCIPLES

- Article 1 These *Implementing Regulations for the Labor Contract Law of the People's Republic of China* (the "Regulations") are formulated in order to implement the *Labor Contract Law of the People's Republic of China* (the "Labor Contract Law").
- Article 2 Governments at all levels and the labor administrative departments and labor unions at the county level and above, and other organizations shall take measures to promote the implementation of the Labor Contract Law and enhance the harmony of labor relationships.
- Article 3 Partnerships such as accounting firms, law firms and foundations, established legally, are "Employers" under the Labor Contract Law.

CHAPTER TWO CONCLUSION OF LABOR CONTRACTS

- Article 4 Branches and offices established by an Employer, as defined in the Labor Contract Law, which have obtained a business license or registration certificate may enter into labor contracts with employees as their Employer. Branches and offices which have not obtained a business license or registration certificate may conclude labor contracts with employees upon authorization by Employer.
- Article 5 Where the employee, upon written notice by Employer, refuses to conclude a written labor contract within one (1) month after the date on which the employee commences work for the Employer, Employer shall, in writing, terminate the labor relationship, without requirement for payment of severance. However, compensation for actual services should be paid to employee according to laws and regulations.

Article 6 In the event that the Employer fails to conclude a labor contract with the employee more than one (1) month but less than one (1) year from the date employee commences work for Employer, the Employer shall pay double salary per month to the employee in accordance with Article 82 of the Labor Contract Law, and shall conclude a written labor contract with Employee. In the aforesaid circumstance, if the employee refuses to conclude a written labor contract with Employer, Employer shall, in writing, terminate the labor relationship and pay severance to the employee in accordance with Article 47 of the Labor Contract Law.

The duration in which the Employer must pay double salary stated in the aforesaid paragraph shall begin from the subsequent day after the one (1) month period from the commencement date, and conclude on the day subsequent to the date on which the written labor contract is concluded.

Article 7 Where the Employer fails to conclude a written labor contract with the employee within one (1) year from the commencement date, the Employer shall pay double salary per month to Employee in accordance with Article 82 of the Labor Contract Law, and shall be deemed to have concluded an open-ended labor contract with employee on the day preceding the last day of the one (1) year term, and Employer should enter into a written labor contract with employee immediately.

Article 8 The “Employee Register” provided in Article 7 of the Labor Contract Law shall include such items as: name, gender, ID number, domicile address and current residential address, contact details, form of employment, the commencement date of employment, and the labor contract term, etc.

Article 9 The consecutive ten (10) year working period stated in Paragraph 2 of Article 14 of the Labor Contract Law shall commence from the date on which the employee commences work for the Employer, including the service term prior to the effective date of the Labor Contract Law.

Article 10 Where the employee is arranged to work for a new Employer due to reasons not attributable to himself/herself, the service term with the former Employer shall be counted towards the service term with the new Employer. Where the former Employer has paid severance to the employee for the relevant service term, the new Employer shall not take such service term into consideration when calculating the total service term for the purposes of severance compensation on termination or expiration of the labor contract.

Article 11 Except as otherwise agreed upon by the employee and Employer, when the employee requests the conclusion of an open-ended labor contract in accordance with Paragraph 2 of Article 14 of the Labor Contract Law, the Employer should enter into an open-ended labor contract with such employee. The terms and conditions of the labor contract shall be decided based on the principles of legality, equality, willingness, negotiation, and good faith. The contents which cannot agreed upon through negotiation shall be decided in accordance with Article 18 of the Labor Contract Law.

- Article 12 The provisions on open-ended labor contracts and severance under the Labor Contract Law will not be applicable to those posts which are established and offered by governments at all levels and relevant departments at the county-level and higher for the difficult-to-employ and for which subsidies and insurance are provided.
- Article 13 Except for the circumstances set out in Article 44 of the Labor Contract Law, Employer and employee may not agree on other conditions under which the labor contract may be terminated.
- Article 14 Where the labor contract is performed in a place other than the registered address of the Employer, the minimum wage standards, labor protection, working conditions, prevention of occupational hazards and monthly average salary of the previous year of the region, shall be decided based on the relevant regulations in the location where the labor contract is performed. In the event that the policies in the registered location of the Employer are higher than that of the place of performance, and the Employer and employee have agreed that the standards in the registered location are to be applicable, their agreement will prevail.
- Article 15 The salary during the probation period shall not be lower than 80% of the lowest salary for the same position offered by the same Employer or 80% of the salary provided by labor contract, or the minimum wage standard in the region where the Employer is located.
- Article 16 The “Training Expense” provided by Paragraph 2 of Article 22 of the Labor Contract Law shall include: the actual training fees, travel expenses and other direct expenses incurred as a result of training, as supported by receipts.
- Article 17 If a labor contract expires prior to conclusion of the service term agreed upon by the Employer and employee in accordance with Article 22 of the Labor Contract Law, the labor contract is to be extended until the service term is performed, provided that no other agreement is made between Employer and employee.

CHAPTER THREE EXPIRATION AND TERMINATION OF LABOR CONTRACTS

- Article 18 The employee may terminate a fixed-term labor contract, open-ended labor contract or labor contract to expire upon completion of a certain task, in accordance with the conditions and procedures provided by the Labor Contract Law, under any of the following circumstances:
1. where the employee and Employer, based on negotiation, have agreed to do so;
 2. where the employee notifies the Employer in writing thirty (30) days in advance;
 3. where the employee notifies the Employer in writing three (3) days in advance, during the probation period;

4. where the Employer fails to provide labor protection and conditions as specified in the labor contract;
5. where the Employer fails to pay compensation fully and in a timely manner;
6. where the Employer fails to pay social insurance premiums for employee in accordance with the law;
7. where the rules and systems of the Employer violate the laws and regulations and infringe upon the rights and interests of the employee;
8. where the labor contract is established or modified against the true intention of the employee as a result of deception, coercion or exploitation due to the favorable position of Employer;
9. where the Employer exempts himself from legal liability and denies the employees' rights in the labor contract;
10. where the Employer breaches the mandatory provisions of laws or administrative regulations;
11. where the Employer forces the employee to work through violence, threats or other means which illegally deprives the employee of freedom of person;
12. where the Employer gives instructions against regulations to compel employee to work in situations which put the employee at risk and places the employee in danger; and
13. other circumstances provided by laws and regulations under which the employee is entitled to terminate the labor contract.

Article 19 The Employer may terminate a fixed-term labor contract, open-ended labor contract or labor contract to expire upon completion of a certain, in accordance with the conditions and procedures provided by the Labor Contract Law, under any of the following circumstances:

1. where the employee and Employer, based on negotiations, have agreed to do so;
2. where the employee is proved to be unqualified during the probation period;
3. where the employee commits a serious breach of the Employer's rules and systems;
4. where the employee commits a serious dereliction of duty or practices graft, causing substantial damage to the Employer;
5. where the Employee has established a labor relationship with another Employer, which materially affects the completion of his tasks with the original Employer, or he refuses to rectify the matter after the same is brought to his attention by the Employer;

6. where the labor contract is established or modified against the true intention of the Employer as a result of deception, coercion or exploitation due to the favorable position of Employer;
7. where the Employee is charged with criminal liability;
8. the employee cannot be employed in his original position or another position arranged by the Employer after the medical care term for an illness or non-work-related injury;
9. where the employee is incompetent and remains incompetent after training or adjustment of position;
10. where a major change in the objective circumstances upon which the labor contract is based results in its inability to perform and, after consultations, the Employer and employee are unable to reach agreement on modifying the labor contract;
11. where the Employer is undergoing restructuring pursuant to laws and regulations on enterprise bankruptcy;
12. where the Employer is experiencing serious difficulties in production or business operations;
13. where the Employer, as a result of switching production, introducing a major technological innovation or revising its business methods, must still reduce its workforce after amending the relevant labor contracts; or
14. any other major change in the objective economic circumstances under which the labor contract was concluded and results in the inability to perform the labor contract.

Article 20 Where the Employer intends to terminate the labor contract by giving the employee one (1) month salary in lieu of notice, in accordance with Article 40 of the Labor Contract Law, the abovementioned salary shall be determined based on the employee's salary for the preceding month.

Article 21 A labor contract shall be terminated when the employee reaches legal retirement age.

Article 22 In the event that a labor contract with a term to expire upon completion of a certain task expires due to the completion of the task, the Employer shall pay the employee severance in accordance with Article 47 of the Labor Contract Law.

Article 23 Where Employer terminates a labor contract with an employee who has sustained a work-related injury, it shall, in addition to paying the employee severance pursuant to Article 47 of the Labor Contract Law, pay the employee work-related injury medical subsidy and disability subsidy in a lump sum, in accordance with state regulations on work-related injury insurance.

Article 24 The certificate of expiration or termination of a labor contract issued by the Employer shall specify: the labor contract term, date of termination or expiration, employee's position, and the actual service term with Employer.

Article 25 Where the Employer terminates or ends a labor contract in violation of the Labor Contract Law and has paid the employee a penalty pursuant to Article 87 of the Labor Contract Law, Employer shall not be liable to pay severance. The number of years on which the penalty is to be calculated shall be counted as of the date on which the employee commenced work.

Article 26 In the event that the Employer and the employee have agreed on a service term, it will not be considered a breach where the employee terminates the labor contract in accordance with Article 38 of the Labor Contract Law, and the Employer shall not be entitled to claim liquidated damages against employee.

Where the labor contract with a stipulated service term is terminated by Employer, the employee shall pay the Employer liquidated damage in accordance with the labor contract, if:

1. the employee materially breaches the Employer's rules and regulations;
2. the employee commits serious dereliction of duty or practices graft, causing substantial damage to the Employer;
3. the employee has established a labor relationship with another Employer which materially affects the completion of his tasks with the original Employer, or he refuses to rectify the matter after the same is brought to his attention by the Employer;
4. the labor contract is established or modified against the true intention of the Employer as a result of deception, coercion or exploitation of the favorable position of employee; or
5. the employee is charged criminally in accordance with the law.

Article 27 The monthly salary as calculation for severance stipulated in Article 47 of the Labor Contract Law shall mean the total compensation to employee, which includes hourly or piece wages, bonuses, allowances and subsidies. Should the average salary of the employee during the 12 months prior to termination or expiration of the labor contract be less than the local minimum wage, the minimum wage shall prevail. If the actual service term of the employee is less than 12 months, the average salary shall be calculated in accordance with the actual service months.

CHAPTER FOUR SPECIAL PROVISIONS ON PLACEMENT

- Article 28 Staffing Firms, where established with capital contributions from an Employer or its subsidiaries, or established in partnership between the said two entities, placement of employees to the said Employer or its subsidiaries, may not occur, as provided in Article 67 of the Labor Contract Law.
- Article 29 Accepting Units shall perform the obligations provided for in Article 62 of the Labor Contract Law and protect the lawful rights and interests of placed employees.
- Article 30 Staffing Firms shall not hire employees for placement based on part-time employment.
- Article 31 Where a labor contract is terminated or ended by a Staffing Firm or placed employee, severance shall be handled in accordance with Articles 46 and 47 of the Labor Contract Law.
- Article 32 In the event that the Staffing Firm terminates or ends the labor contract in violation of laws, relevant affairs shall be handled in accordance with Article 48 of the Labor Contract Law.

CHAPTER FIVE LIABILITIES

- Article 33 In the event that an Employer violates the provisions concerning the Employee Register in the Labor Contract Law, the labor administrative departments shall order rectification. If the Employer fails to make rectification within the stipulated period, the labor administrative departments shall impose a fine on the Employer of not less than RMB 2,000 and not more than RMB 20,000.
- Article 34 Where an Employer fails to pay an employee twice his salary each month or fails to pay an employee penalties in accordance with the provisions of the Labor Contract Law, the labor administrative departments shall order the Employer to make such payment.
- Article 35 Where an Accepting Unit violates the provisions of the Labor Contract Law or these Regulations concerning placement, the labor administrative departments or other relevant supervisory authorities shall order rectification. Should the circumstances be serious, the Accepting Units shall be fined in the amount of not less than RMB 1,000 and not more than RMB 5,000 for each placed employee. If the said conduct causes damages to the placed employees, the Staffing Firm and the Accepting Unit shall be jointly and severally liable for damages.

CHAPTER SIX SUPPLEMENTARY PROVISIONS

- Article 36 The labor administrative departments at the county level or higher shall handle any complaints or reports on violations of the Labor Contract Law and the Regulations in accordance with the *Regulations for Monitoring Labor Security*.
- Article 37 Any disputes arising from the conclusion, execution, amendment, termination or expiration of the labor contract between Employer and employee shall be handled in accordance with the *Law of the People's Republic of China on the Mediation and Arbitration of Employment Disputes*.
- Article 38 These Regulations shall be implemented as of the date of their promulgation.